

Exhibit U

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 1, 2009

7:59 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1
2 HEARING re Debtors Motion Pursuant to 11 U.S.C. §§ 105, 363(b),
3 (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004,
4 and 6006, to (i)Approve (a)the Sale Pursuant to the Master Sale
5 and Purchase Agreement with Vehicle Acquisition Holdings LLC, a
6 U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens,
7 Claims, Encumbrances, and Other Interests; (b)the Assumption
8 and Assignment of Certain Executory Contracts and Unexpired
9 Leases; and (c)Other Relief; and (ii)Schedule Sale Approval
10 Hearing

11
12 HEARING re Notice of Settlement of an Order Denying Motion of
13 the Unofficial Committee of Family & Dissident GM Bondholders
14 for an Order Directing the United States Trustee to Appoint an
15 Official Committee of Family & Dissident Bondholders

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25 Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, everybody.

All right. We're here on GM, the motion of Manufactures and Traders for relief from the stay. I have no objection to it from the debtors. Folks, why are we here? I have never seen such a slam dunk entitlement to relief from the stay in a commercial case and I have no objection from the debtors. Mr. Smolinsky, are you appearing for the debtors on this?

MR. SMOLINSKY: Yes, Your Honor. I think the reason why we're here is simply because we received a draft stipulation a day or so before the hearing. And it just took time to allow the unsecured creditors' committee to review it and for us to review it. So we apologize for the Court's inconvenience. We had tried to move it to a time that was consistent with our other hearings in the case. But we're prepared to stipulate we reviewed the stipulation. We had a call last night and finalized the verbiage of the stipulation.

THE COURT: Well, I'm here anyway. But this situation required a lawyer to come up from Philly for such a plain entitlement? Let me tell you what else is bothering me, Mr. Smolinsky. After some bad experiences in the Lyondell Chemical case, I built into my case management order a provision that before people move for emergency relief from the stay, they'd have to contact the debtor to see if the debtor would consensually agree to give them whatever relief from the

1 stay or adequate protection they were asking for. And even to
2 require a certification that they had tried to work it out with
3 the debtor to avoid the expense of dealing with the matter of
4 this character.

5 So I looked very hard for the certification because I
6 couldn't believe that a creditor had to make a motion of this
7 character if they had picked up the phone and discussed it with
8 the debtor. And the certification that I have here says that
9 on June 16th, counsel for the movant called your firm's office
10 where they were directed to the number of the debtors' noticing
11 and claims agent. And that they subsequently spoke to a
12 representative of the claims agent and left a detailed message
13 that presumably wasn't responded to. And then on that same
14 day, they made additional efforts to reach debtors' counsel
15 telephonically and left a message with the attorney purportedly
16 assigned to the debtors' case. And according to the
17 certification, in three days they never got a response? That
18 exactly frustrates the purpose of the certification mechanism
19 and required counsel to appear on a motion which if there were
20 an eight second phone call with a second year associate, one
21 who'd have been admitted to the bar for a week, we could have
22 avoided this.

23 MR. SMOLINSKY: Your Honor, let me -- if I can
24 explain? First of all, in terms of counsel being here, we
25 accommodated them to the utmost. We told them that they didn't

1 need to appear. If the committee needed more time to review
2 the stipulation -- as I said, we had the stipulation for less
3 than a day while all the sale hearing activities were going
4 forward. We told counsel that they didn't need to appear, that
5 we would simply tell the Court that there was a resolution and
6 that we would submit a stipulation.

7 In terms of the calls, I can only say, and I'm not
8 saying this for any excuse, but we've been receiving, as you
9 can imagine, tens of thousand of calls. We put a process in
10 place, as well as General Motors put a process in place, where
11 an attorney would return every phone call. And if it was a
12 creditors' call, it would be referred to the supplier hotline
13 call center that you've heard about. There was no physical way
14 for myself to return all of the calls --

15 THE COURT: Well, I wouldn't expect a partner to
16 respond to a call of this character but you've got to have a
17 first year associate -- or, if you think that it requires
18 practicing law, a second year associate -- return a call from
19 another lawyer.

20 MR. SMOLINSKY: Your Honor, we did have an attorney
21 return all the calls. Why it wasn't taken as a call that could
22 be -- that could result in an immediate settlement, I don't
23 know. It was referred to the call center. I think the call
24 center has been getting back to people but they may not have
25 been -- they may not understand how to deal with a motion to

1 lift stay. We're been working with counsel. They sent us the
2 perfection documents. We looked at them quickly and there's
3 been no impediment to getting a stipulation done other than the
4 short period of time that we had to review it.

5 THE COURT: All right. I can understand why you
6 can't make a deal without consulting the creditors' committee.
7 But what I do expect is that when a lawyer for a creditor in
8 the case calls, at least one who's saying that he needs
9 emergency relief and wants relief from the stay, that some
10 lawyer at your firm, at debtors' counsel or your co-counsel,
11 will answer the guy's call, will return the guy's call. And if
12 you can't make a deal, say I've got to call the creditors'
13 committee, I'll get back to you as soon as you can. I'll pay
14 or I'll authorize payment from the estate but you need to put
15 an extra general associate on the matter to return calls of
16 this character. But I won't pay or authorize payment for the
17 need to respond to motions of this character.

18 The motion's granted and we're adjourned until 9:00.

19 MR. SMOLINSKY: Thank you, Your Honor.

20 (Recess from 8:05 a.m. until 9:21 a.m.)

21 THE COURT: I want to apologize to any of you who may
22 have been waiting for us to begin. We had some business we had
23 to take care of before now. Mr. Miller?

24 MR. MILLER: Good morning, Your Honor. Harvey Miller
25 on behalf of the debtors. Your Honor, just one housekeeping

1 detail.

2 THE COURT: Yes?

3 MR. MILLER: We referred yesterday to the amended
4 MSPA and I neglected to move it into evidence, Your Honor. So
5 I would ask that it be marked in evidence as Debtors' Exhibit
6 6A so that it will come right after the original that was filed
7 on June 1st.

8 THE COURT: Okay. That's the amended one?

9 MR. MILLER: Yes.

10 THE COURT: Any objection? Hearing none, it's
11 admitted.

12 MR. MILLER: Thank you, Your Honor.
13 (Debtors' Exhibit 6A, amended MSPA, was hereby received into
14 evidence as of this date.)

15 THE COURT: Are we up to the cross-examination of Mr.
16 Wilson?

17 MR. MILLER: I think Mr. Repko was first, Your Honor.

18 THE COURT: I'm sorry?

19 MR. MILLER: Mr. Repko.

20 THE COURT: Oh, Mr. Repko first. Okay. You want to
21 remain standing to be sworn? Karen?

22 (Witness duly sworn)

23 THE COURT: Have a seat, Mr. Repko.

24 CROSS-EXAMINATION

25 BY MR. RICHMAN:

1 Q. Good morning, Mr. Repko.

2 A. Good morning, sir.

3 Q. I'm Michael Richman from Patton Boggs representing
4 dissident bondholders' committee. I think between you and Mr.
5 Koch and Mr. Miller, we have a veritable hall of fame of
6 bankruptcy professionals. Would you talk to us generally about
7 your background in the industry, not just with Evercore but
8 prior to that in your experience with bankruptcy cases?

9 A. Yes. I was with JPMorgan predecessor institutions for
10 thirty-two years; various responsibilities from the pure
11 workout function acting for the bank's own interests to an
12 advisory business internationally; and then for the last
13 fifteen or so years, as head of the restructuring group which
14 was designed to deliver capital to troubled companies both in
15 court and out of court.

16 Q. Could you comment on your experience generally in creating
17 and/or valuing bankruptcy spinoffs under Chapter 11 plans?
18 Creation of new companies from the best assets of the old
19 debtors?

20 A. Well, as part of the capital delivery problem, the credit
21 decision, at least the way I practice it, not only involved the
22 process of financing the company that was in trouble but also
23 identifying the process by which the company would get out of
24 trouble and reorganize because in order to satisfy yourself as
25 a DIP lender, you need to understand how the company will exit

1 and how it will finance itself.

2 Q. So you have extensive experience with valuing reorganized
3 debtors?

4 A. I think so, yes.

5 Q. Now, in connection with your assignment for the debtors in
6 this case, were you the main spokesperson for Evercore with the
7 board of directors of GM?

8 A. I was -- I was one of them. There were four senior people
9 involved for Evercore, the first and foremost being our
10 chairman and then chief executive officer, Roger Altman;
11 another senior managing director, William Hiltz; myself and
12 Stephen Worth. And there were others.

13 Q. Were you present during board meetings when the fairness
14 opinion that Evercore prepared was presented to the board?

15 A. Yes.

16 Q. Were you also part of the chain of communications in GM's
17 board giving the assignment to do the fairness opinion?

18 A. I'm sorry?

19 Q. Who asked you to prepare the fairness opinion?

20 MR. MILLER: Excuse me. As Mr. Repko or Evercore?

21 Q. Who asked Evercore to prepare the fairness opinion?

22 A. General Motors did.

23 Q. And what were the parameters in those -- were you privy to
24 that discussion?

25 A. I don't believe I was present for that discussion.

1 Q. Who was the discussion with?

2 A. I believe that discussion was with Mr. Worth, primarily,
3 and Mr. Hiltz.

4 Q. At any time, to your knowledge, did GM's board ask
5 Evercore to value New GM if New GM were created under a Chapter
6 11 plan rather than a 363 sale?

7 A. I don't believe so.

8 Q. Were you instructed not to do that?

9 A. We had specific instructions on how to perform the
10 valuation which are contained in Mr. Worth's declaration, I
11 believe.

12 Q. So there was no -- to your knowledge, no valuation
13 whatsoever was performed with respect to the creation of a new
14 GM under a plan as distinct from a 363 sale?

15 A. Not to my recollection.

16 Q. If you assume with me that financing would be available
17 for New GM in comparable numbers to what is now being proposed
18 or promised, could a new GM be created under a Chapter 11 plan
19 with the same or comparable values to the new GM which is being
20 created under the 363 sale?

21 MR. MILLER: Your Honor, I think there has to be a
22 foundation laid as to the assumptions.

23 THE COURT: Well, I think that it's debatable whether
24 the assumption is there. And if he's an expert, if you create
25 the assumptions and you want to get his assumption on some

1 alternate theory, you can, although, Mr. Richman, you're going
2 to have to address whether that opinion would have any
3 relevance if that financing weren't available. Objection
4 overruled.

5 MR. RICHMAN: Thank you, Your Honor. And I'm just --

6 THE COURT: And that's on the premise that he's an
7 expert. I'm assuming that you concede that he's an expert, Mr.
8 Richman.

9 MR. RICHMAN: Absolutely, Your Honor. I do and I'm
10 asking to assume that the financing is available for New GM
11 under a plan.

12 A. Would you repeat the question?

13 Q. So assuming financing is available for New GM but created
14 through a plan of reorganization rather than a 363 sale, would
15 you expect the value of New GM to be comparable to the value in
16 the fairness opinion?

17 A. I haven't done that analysis and that's, I think, the --
18 given the assumption, without the analysis, they would go
19 behind -- beyond that opinion.

20 Q. Well, what analysis would you do differently than what is
21 already in the fairness opinion?

22 A. Well, in the first instance would be the amount of time
23 taken to achieve a plan of reorganization versus the
24 transactions that's before the Court. And I don't -- I have --
25 I don't have a particular view on how long that might take but

1 I suspect it would be longer. And that has certain aspects of
2 the business' performance, in my view, probably negative. And
3 then there's a real question about whether the financing would
4 be available and that -- that is assumption is a large one.

5 Q. Well, assume with me that the financing is available. And
6 assume with me that a Chapter 11 plan is filed on the petition
7 date on an accelerated schedule so that you're still within the
8 same sixty to ninety days that GM told the public it hoped to
9 emerge from bankruptcy. With those assumptions, would you
10 expect New GM to have the same or comparable value that it has
11 under the fairness opinion?

12 MR. MILLER: Your Honor, please, same objection.
13 What is meant by "accelerated"?

14 MR. RICHMAN: I said within sixty to ninety days
15 emergence.

16 THE COURT: Overruled. Mr. Repko, answer the
17 question but as you see fit.

18 THE WITNESS: Yes, Your Honor.

19 A. Given the assumptions that you've made, it could be.

20 Q. Are you familiar with how the fairness opinion valued the
21 collective bargaining agreement, UAW settlement?

22 A. Broadly.

23 Q. Does the fairness opinion include the value of the
24 consideration being paid to the VEBA?

25 MR. MILLER: Your Honor, please, is this in the

1 nature of cross or is Mr. Richman calling Mr. Repko as his
2 witness because this is way beyond Mr. Repko's declaration.

3 MR. RICHMAN: It is both adverse direct and cross,
4 Your Honor. It's related directly to the fairness opinion and
5 the valuations.

6 MR. MILLER: Mr. Repko was not proffered, Your Honor,
7 as a valuation witness. He was proffered in connection with
8 getting debtor-in-possession financing.

9 MR. RICHMAN: Actually, the exhibit list indicates
10 that his -- I believe, if I read it correctly, that he was
11 being proffered both for the 363 sale as well as the DIP
12 financing.

13 MR. MILLER: In respect of financing and not as the
14 valuation.

15 MR. RICHMAN: Well, so --

16 THE COURT: All right. I've had enough. If that's
17 deemed to be an objection, it is overruled. The fact that this
18 fellow wasn't on the point on the valuation is obviously
19 irrelevant to whether I should consider it as undercutting the
20 persuasiveness of any evidence or testimony that might be
21 inconsistent with the valuation. But I can understand the
22 difference. And I can understand how many of the questions are
23 inconsistent -- use assumptions that are inconsistent with the
24 record. The objection is overruled. Mr. Repko can answer the
25 questions as he sees fit. And both sides can point out to me

1 why they think the testimony should be regarded as relevant
2 more or less in light of the entirety of the record. Go ahead,
3 Mr. Richman.

4 BY MR. RICHMAN:

5 Q. Mr. Repko, do you remember the question? No? Do you know
6 whether the consideration being paid by New GM into the VEBA
7 was part of the fairness opinion?

8 A. Without looking at it again and thinking about it, I don't
9 really recall.

10 Q. Okay.

11 MR. RICHMAN: One second, Your Honor.

12 THE COURT: Sure.

13 MR. RICHMAN: Nothing further at this time.

14 THE COURT: Very well. Other objectors who wish to
15 question Mr. Repko? All right. None? Any redirect, Mr.
16 Miller?

17 MR. MILLER: No, Your Honor.

18 THE COURT: All right. Mr. Repko, you're excused --

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: -- from the court. Okay. Can we go
21 right to the material on material on Wilson?

22 MR. SALZBERG: Yes, Your Honor.

23 THE COURT: Mr. Salzberg, come on up.

24 MR. SALZBERG: Your Honor, in connection with Mr.
25 Wilson's testimony, it might be useful at this point to

1 introduce the four exhibits proffered by the government.

2 That's Mr. Wilson's declaration and three what I'll refer to as
3 the intercreditor agreements.

4 THE COURT: Okay. Is there any objection? Hearing
5 none, the exhibits are in evidence.

6 (Government Exhibits 1-4, Declaration of Mr. Wilson and three
7 intercreditor agreements, were hereby received into evidence as
8 of this date.)

9 THE COURT: And --

10 MR. SALZBERG: If you'd like, I have a --

11 THE COURT: Yeah. That would be handy. Thank you.
12 Mr. Wilson?

13 THE WITNESS: Yes.

14 THE COURT: Come up, please. Mr. Wilson, I've got to
15 impose the same rules on you as I've imposed on everybody else
16 in the courtroom. Leave the soda there and give him some
17 water. Remain standing here. Karen?

18 (Witness duly sworn)

19 THE COURT: Have a seat, please, Mr. Wilson.

20 CROSS-EXAMINATION

21 BY MR. SALZBERG:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. For the record, Mark Salzberg, Patton Boggs, on behalf of
25 the unofficial committee of family and dissident bondholders.

1 Since your declaration has now been entered into evidence, I'm
2 going to dispense with the preliminary background information.
3 But suffice it to say that you are a member of the auto task
4 force?

5 A. Yes.

6 Q. And when did you join the auto task force?

7 A. In the first week of March 2009.

8 Q. And as a member of the auto task force, you have primary
9 responsibility with regards to the U.S. Treasury's interactions
10 with GM, is that correct?

11 A. Among other things, yes.

12 Q. Okay. And even though you joined the auto task force in
13 mid-2009, or the first quarter of 2009, you're familiar with
14 the activities of the auto task force prior to that time with
15 regards to GM, is that right?

16 A. Some of them.

17 Q. Now, the Treasury entered into a loan and security
18 agreement on December 31, 2008, is that correct?

19 A. Yes.

20 Q. And in your declaration -- and I'm referring to page 4,
21 paragraph 10 -- you state in a parenthetical that many of the
22 terms and covenants of that agreement were more lenient or
23 favorable than "market terms".

24 MR. SCHWARTZ: Does Mr. Salzberg have a copy for the
25 witness?

1 MR. SALZBERG: I'm sorry. I thought that you had
2 presented that.

3 THE COURT: All right. Just give him a second to
4 follow along in his declaration. One or another, provide him
5 with a copy.

6 MR. SALZBERG: I apologize, Your Honor.

7 (Pause)

8 MR. KENNEDY: A copy is in the IUE exhibit book as
9 Wilson 1. That's the large volume of --

10 MR. SALZBERG: Thank you. Yeah. Your Honor, if I
11 may approach the witness?

12 THE COURT: Sure.

13 THE WITNESS: Thank you.

14 Q. And again, I'm referring to page 4, paragraph 10. Do you
15 see the paragraph I referred to?

16 A. Yes.

17 Q. And what were the terms and covenants which were more
18 lenient or favorable than market terms?

19 A. Well, as a general matter, I think the interest rate
20 associated with the loan was probably below what a purely
21 commercial lender would charge at that point in time given the
22 financial distress evident at General Motors.

23 Q. Any other terms and conditions which were more favorable
24 to market terms?

25 A. It's not clear to me that a lender wouldn't -- another

1 purely commercial lender would not have imposed restrictions on
2 cash flows beyond what we imposed.

3 Q. Okay. How far below market rate was the interest rate
4 under the LSA? And by LSA, that's the term that you use in
5 your declaration to refer to loan and security agreement.

6 A. I've never performed any analysis on that front.

7 Q. Okay. Were there any other sources for financing for GM
8 at that time? And by "that time", I'm referring to December
9 31, '08.

10 A. As you know --

11 MR. MILLER: Excuse me, Your Honor. Mr. Wilson was
12 not at the Treasury in December of 2008.

13 THE COURT: I'm going to sustain but you can lay a
14 foundation as to his knowledge. And then if a satisfactory
15 foundation is laid, we can take it from there, Mr. Salzberg.

16 MR. SALZBERG: Thank you, Your Honor.

17 Q. You joined the auto task force in March of 2009, is that
18 correct?

19 A. Yes.

20 Q. Okay. And even though you joined in March 2009, you
21 became familiar with the activities of the auto task force that
22 were done prior to that time, is that correct?

23 A. I believe, as I testified earlier, some of them.

24 Q. And in your -- did you review the activities of the auto
25 task force that occurred prior to the time that you joined?

1 **A. Some of them.**

2 **Q. Okay. And is one of the things that --**

3 MR. MILLER: Objection Your Honor. Objection Your
4 Honor. There was no auto task force in December 2008.

5 THE COURT: Wait. I couldn't hear you, Mr. Miller.

6 MR. MILLER: There was no automobile task force in
7 2008 or in the first three months of 2009.

8 MR. SALZBERG: Your Honor, I can clarify.

9 THE COURT: Okay. By the way, does anybody know
10 what's causing that noise?

11 MR. SALZBERG: Is it me?

12 THE COURT: It's obviously something near some mic.

13 MR. SALZBERG: It might me. Sorry.

14 MR. MILLER: It could be two, Your Honor.

15 UNIDENTIFIED SPEAKER: It sounds like somebody on the
16 phone --

17 MR. SALZBERG: Okay.

18 THE COURT: Go ahead, Mr. Salzberg.

19 MR. SALZBERG: I'll try not to breathe as much. Just
20 every minute or two. Okay.

21 **Q. In paragraph 1 of your declaration, you refer to the auto**
22 **team, is that right?**

23 **A. Yes.**

24 **Q. Okay. And so I misspoke when I say auto task force. I'm**
25 **referring to the auto team as you defined that in your**

1 declaration, okay?

2 A. Okay.

3 Q. Okay. As part of your efforts to become familiar with the
4 activities of the auto team that occurred prior to your
5 joining, did you review the loan and security agreement?

6 A. Yes.

7 Q. Did you review the other sources of financing, if any,
8 that were available to GM in December of 2008?

9 A. No, I did not.

10 Q. Okay. The total amount -- what was the total amount
11 extended or loaned to GM pre-petition by the U.S. Treasury?

12 A. 19.4 billion dollars.

13 Q. And how much was extended -- of that loan, how much was
14 extended in December of 2008?

15 A. I believe on December 31st, the first day of the LSA, it
16 was 4.0 billion dollars.

17 Q. Now when this 4.0 billion dollars was lent to GM, do you
18 know if GM had any other sources of financing?

19 A. I don't know.

20 Q. Was GM at that time solvent?

21 A. As I testified in my deposition, Mr. Salzberg, under the
22 same question from you, I indicated at that point that we did
23 not perform that analysis.

24 Q. Okay. Subsequent amounts were lent by the government to
25 GM prior to the petition date, correct?

1 A. That's correct.

2 Q. And those amounts were lent in January, February, March,
3 April and in May, is that correct?

4 A. January, February, April and May, I believe.

5 Q. Okay. So not in March. And do you know at any of those
6 times when those monies were lent by the Treasury to GM, was GM
7 solvent?

8 A. We did not perform a solvency analysis at that point in
9 time. Our focus was primarily upon do we believe that the loan
10 had a reasonable likelihood of being repaid 'cause I think most
11 lenders would use that test.

12 Q. How did the government anticipate that this loan would be
13 repaid?

14 A. Well, as you'll recall, the company was operating under a
15 Viability Plan 2 at that point in time that was prior -- for
16 much of that time not all of that time. And under the auspices
17 of Viability Plan 2, we believed that the transaction that was
18 proposed, which was the financing that we advanced combined
19 with the equitization of two-thirds of the bonds and half the
20 obligation of VEBA allowed for a reasonable probability of
21 repayment.

22 Q. Just so I understand, was the repayment to the Treasury
23 dependent upon a reorganization of GM's business?

24 A. No. It was dependent upon a restructuring of certain
25 obligations as evidenced in the LSA.

1 Q. And the government's anticipated repayment was based upon
2 a viability plan? I think you said Viability Plan 2, is that
3 correct?

4 A. It was around a certain set of assumptions, at that point,
5 best embodied in Viability Plan 2.

6 Q. Okay. And Viability 2 was not accepted by the
7 government -- by the auto team, was it?

8 A. We believe that Viability Plan 2 did not provide a
9 substantial enough restructuring of the operation of General
10 Motors and rejected it as a result of that.

11 Q. Okay. Just to be clear, it was rejected by the
12 government.

13 A. That's what I said. It was rejected because of that, yes.

14 Q. Okay. Would you say that as --

15 MR. SALZBERG: Well, strike that.

16 Q. Was the Treasury the lender of last resort for GM after
17 December of 2008?

18 A. Most likely, that's yes. I mean, we encouraged General
19 Motors on a number of occasions to try and identify private
20 alternatives. We said a number of times we would prefer a
21 private alternative to our involvement. And as a result of the
22 fact, there did not seem to be any private alternatives either
23 at that point or at this point, for that matter. I think it's
24 reasonable to conclude we were effectively the lender of last
25 resort.

1 Q. Would you say that as the lender of last resort, the
2 United States government had leverage over General Motors?

3 A. I think that's fair to say.

4 Q. Would it be fair to say -- or to call that leverage
5 extraordinary leverage?

6 A. I think that was a comment that was introduced in the
7 question at my deposition but I don't think it's a word that I
8 used. I think it would certainly be significant.

9 MR. SALZBERG: May I have a moment, Your Honor?

10 THE COURT: Of course.

11 MR. SALZBERG: Your Honor, may I approach the
12 witness? I have a copy of the deposition transcript that was
13 taken of Mr. Wilson.

14 THE COURT: Yes, you may.

15 MR. SALZBERG: Okay. And, Your Honor, I have a copy
16 for you.

17 THE COURT: Thank you.

18 Q. Sir, if you could turn to page 155 and 156.

19 A. Who is the question in this case, Mr. Salzberg? Is it
20 you?

21 Q. These were questions that I posed to you, Mr. Wilson.

22 A. Okay.

23 Q. And just for the record, this is a transcript of the
24 deposition that was taken of you on Monday of this week. Do
25 you recall that deposition?

1 A. Yes.

2 Q. And I would point you to page 155, line 13.

3 MR. SALZBERG: And, Your Honor, if I may read the
4 question and answer.

5 Q. My question was: "You had said in response to prior
6 questioning that the Treasury had leverage. I think you used
7 the term 'extraordinary leverage' with regard to GM in the
8 negotiations. Do you recall that testimony?" Your answer was:
9 "Yes. I think that was in the context of my saying. There
10 were no other lenders. We were the lenders of last resort in
11 this instance."

12 "Q. You used the term 'extraordinary leverage', is that right?

13 "A. I think in a situation where a company needs cash and
14 doesn't have any other access to cash, I think that's a
15 reasonable way to characterize it."

16 MR. SCHWARTZ: Objection. If he wants --

17 THE COURT: Before you -- okay, wait. Before you
18 answer, Mr. Wilson, wait for this to play out. Mr. Salzberg,
19 you haven't asked a question yet. Mr. Schwartz has risen to
20 object. Let's get the full question out and then I'll rule on
21 it before there's an answer.

22 Q. I asked you before, sir, if the government's leverage was
23 extraordinary and my recollection of your answer was not -- was
24 no, you did not characterize it as extraordinary although in
25 your deposition earlier this week, you did call it

1 **extraordinary.**

2 THE COURT: All right. Now I'll hear Mr. Schwartz.
3 The implication is that he's given an inconsistent statement?

4 MR. SALZBERG: Yes, Your Honor.

5 THE COURT: All right. Mr. Schwartz?

6 MR. SCHWARTZ: If Mr. Salzberg is trying to impeach
7 Mr. Wilson on the word "extraordinary", he should go to the
8 part of the deposition where Mr. Wilson actually uses the word
9 "extraordinary" if there is such a word. The passage that he
10 just quoted began with his question: I think you used the word
11 "extraordinary". And I heard Mr. Wilson testify in his answers
12 today earlier that it was a word all along that Mr. Salzberg
13 had introduced in his question.

14 THE COURT: All right.

15 THE WITNESS: I'd like to answer, Your Honor.

16 THE COURT: Beg your pardon?

17 THE WITNESS: Can I answer, Your Honor?

18 THE COURT: You certainly can if you and your
19 counsel, which, I guess, is Mr. Schwartz here, want to waive
20 his rights under Rule 32 and have Mr. Salzberg read more. Mr.
21 Schwartz, are you happy with the witness just answering?

22 MR. SCHWARTZ: I'm always happy with the witness
23 answering. But I do think I made my point here and he doesn't
24 have to answer.

25 THE COURT: Okay. Look, folks, the reason that Rule

1 32 allows and requires more to be said is to protect the
2 witnesses. It sounds to me like the witness is capable of
3 answering himself. And under those circumstances, Mr.
4 Schwartz, are you okay with withdrawing your objection or your
5 requirement that there be a Rule 32 designation?

6 MR. SCHWARTZ: That's fine.

7 THE COURT: Okay. Go ahead, Mr. Wilson.

8 THE WITNESS: Thank you, Your Honor.

9 A. Mr. Salzberg, as you can see in the passage you read, I
10 did not use the word extraordinary. You used the word
11 extraordinary. I went back later to my deposition once it was
12 filed to determine if I had used the word extraordinary and did
13 not. You used the word extraordinary. I was agreeing to a
14 general concept not to every single word you spoke. And I
15 think it's a mischaracterization of my statement throughout the
16 deposition as well as today to contend otherwise.

17 Q. Just so I'm clear, has your counsel filed an errata sheet
18 to your deposition yet?

19 A. I don't know.

20 Q. Okay. All right.

21 THE COURT: Mr. Salzberg, as I took down the
22 testimony and the notes, Mr. Wilson said in words or in
23 substance it's fair to say that the government had leverage.
24 You want to make an issue of the word "extraordinary" that you
25 would put into that question?

1 MR. SALZBERG: No, Your Honor. I think we'll move
2 on.

3 THE COURT: Okay.

4 MR. SALZBERG: Okay.

5 Q. Did the government have the ability to call the loans, to
6 make the loans due and payable if a viability plan submitted by
7 GM was deemed by the auto team to be insufficient?

8 A. I believe that's correct.

9 Q. And those loans would be due and payable within sixty days
10 after that determination was made, is that correct?

11 A. Yes.

12 Q. At the time that the loans were extended by the government
13 starting December 2008, was GM able to pay its debts as they
14 became due as a result of the loans?

15 A. Yes.

16 Q. But not before the loans had been extended, is that
17 correct?

18 A. That is what necessitated the loans.

19 Q. Now, with the leverage that the Treasury had, the Treasury
20 was able to exert influence over GM, is that correct?

21 A. Well, we certainly engaged in an active dialogue with the
22 company around the terms of their operating restructuring. But
23 we never once said to the company we intend to call the loans.

24 Q. All right.

25 THE COURT: Mr. Salzberg, before you go on --

1 MR. SALZBERG: I'm sorry.

2 THE COURT: -- and I know I'm going to sound
3 inconsistent here, and, Mr. Wilson, you're allowed to breathe
4 and we may hear your breathing. But I am going to ask that you
5 keep the microphone closer to you.

6 THE WITNESS: Closer to me?

7 THE COURT: Yes, please.

8 THE WITNESS: Okay.

9 THE COURT: Go ahead, Mr. Salzberg.

10 MR. SALZBERG: Okay. Thank you, Your Honor.

11 Q. The CEO presently of GM is Mr. Henderson, correct?

12 A. Yes.

13 Q. And his predecessor was Mr. Wagoner, is that correct?

14 A. Yes.

15 Q. And the auto team informed Mr. Wagoner in March of 2009
16 that the auto team did not have confidence in his leadership,
17 is that correct?

18 A. Yes.

19 Q. And shortly thereafter --

20 MR. SALZBERG: Well, strike that.

21 Q. That was conveyed to Mr. Wagoner by, I believe, Mr.
22 Rattner --

23 A. That's correct.

24 Q. -- who was the head of the auto team, is that right?

25 A. That's correct.

1 Q. Okay. And shortly after Mr. Rattner informed Mr. Wagoner
2 of the lack of confidence, Mr. Wagoner resigned as CEO, is that
3 right?

4 A. That's correct.

5 Q. The Treasury required that the assets that are the subject
6 of the sale motion today require that those assets be sold
7 through a 363 process as opposed to being disposed of through a
8 plan of reorganization, is that correct?

9 A. Yes.

10 MR. SALZBERG: Your Honor, if I may, yesterday we
11 introduced for limited purposes Bondholder Exhibit number 2.
12 And I'd like to show the witness Bondholder Exhibit number 2
13 but I don't have the original.

14 THE COURT: You can certainly show it to the witness.

15 MR. SALZBERG: Do you have the original?

16 THE COURT: Do I have the original?

17 MR. SALZBERG: No, no. I was talking to the clerk.
18 I'm sorry.

19 THE COURT: I don't know if the clerk does. I think
20 that as people were marking exhibits, they kind of gave me
21 working copies. And I don't know if they were official copies
22 or not.

23 MR. SALZBERG: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, you may. Give me a second to get my

1 copies. Mr. Salzberg, it says on the front "Use of Section 363
2 to Expedite Restructuring of Distressed OEMs"?

3 MR. SALZBERG: Yes, Your Honor.

4 THE COURT: Okay. I'm with you. Go ahead.

5 MR. SALZBERG: Okay. And for the record, this is
6 Bondholder Exhibit number 2 which bears Bates stamps GMPR92336
7 through 92360.

8 Q. You see the first page of Bondholder Exhibit 2 referenced
9 to Cadwalader Wickersham & Taft?

10 A. Yes.

11 Q. And they were the government's outside counsel in this
12 transaction, is that correct?

13 A. They were the counsel to the U.S. Treasury, yes.

14 Q. Okay. Do you recognize Bondholder Exhibit number 2?

15 A. I know we went through this several times in the course of
16 my deposition on Monday.

17 Q. I'm asking you if you recognize this document.

18 A. Yes.

19 Q. Okay. Did you see this document as part of your
20 responsibilities as a member of the auto team?

21 A. I, at this time, no longer recall what I saw prior to
22 Monday on this document. I'm sure at my deposition I explained
23 to you whether I had seen it prior to Monday or not. I just
24 can't recall at this point after having gone through it several
25 times.

1 Q. Do you have any reason to doubt -- well, do you remember
2 if this document was provided to you by the Treasury's outside
3 counsel?

4 A. I'm not sure what you're asking, sir. And I'm answering
5 the same way. I believe that I saw this several times on
6 Monday. At the beginning of my deposition on Monday, I
7 testified as to whether or not I had seen it before. At this
8 point, I can no longer recall 'cause I went through it so many
9 times on Monday.

10 Q. Okay. All right. If I can ask you to turn to page 3 of
11 this document? Before I point you to specific parts of page 3,
12 did Cadwalader provide advice to the U.S. Treasury regarding
13 potential processes for accomplishing the disposition of the
14 assets being sold under the sale motion?

15 A. Yes.

16 Q. Okay. So, in other words -- that was kind of a convoluted
17 question. Your counsel told you of the different ways in which
18 the assets can be disposed of.

19 A. That's correct.

20 Q. Okay. And one of the ways that was highlighted by your
21 counsel was under Section 363 of the Bankruptcy Code.

22 A. That's correct.

23 Q. And the other way was through a plan of reorganization, is
24 that right?

25 A. There were other alternatives. The plan was one of them.

1 Q. Okay. So two of the alternatives that were discussed are
2 referenced on this page 3. Do you see that?

3 Q. And would it be fair to say that your counsel identified
4 strategic benefits of a 363 sale as compared to a plan?

5 A. I think this page, sir, describes the tradeoff associated
6 with either of the 363 sale or the plan.

7 Q. Without reference to page 3 of the document, I'm just
8 asking did your attorneys advise you of the strategic benefits
9 available under Section 363 as opposed to under a plan
10 confirmation process.

11 MR. SCHWARTZ: Objection. I think we're getting
12 dangerously close to privileged information.

13 THE COURT: All right. Well, the substance of
14 privileged advice is privileged. The subject matter of
15 privileged advice -- or of legal advice is not privileged. You
16 can ask subject matter, Mr. Salzberg, but not substance. Or,
17 of course, if you lay a foundation that somebody was present in
18 a nonprivileged communication or in a communication that might
19 have otherwise been privileged. And if the privilege was
20 broken, you can do that.

21 MR. SALZBERG: Your Honor, I'll restrict my questions
22 right now to the actual document that's in front of the witness
23 which, I believe, would take care of the privilege issues.

24 THE COURT: Thank you.

25 Q. If you look at page 3 under the Section 363 column, there

1 are a number of bullet points. Do you see that?

2 A. Yes.

3 Q. And is it fair to say that your attorneys, in this
4 document, advised you that one of the benefits, strategic
5 benefits, of a 363 sale is that the consent of creditors and
6 shareholders were not required?

7 A. That is what this bullet point says, yes.

8 Q. Okay. Fair to say that your counsel advised you that one
9 of the strategic benefits available under Section 363 is that
10 the standards are lower than under a plan confirmation process.

11 MR. SCHWARTZ: Objection. Same objection. What his
12 counsel advised him is not appropriate.

13 THE COURT: If you're going beyond what the document
14 says, as I sense you are, Mr. Salzberg, the objection is
15 sustained.

16 MR. SCHWARTZ: We also don't have on this record that
17 Mr. Wilson has seen this document and been through this
18 document with anyone.

19 MR. SALZBERG: I believe, Your Honor, what the --

20 THE COURT: Well, what we have on the record is that
21 he saw it on Monday and he doesn't remember whether or not he
22 saw it before.

23 MR. SCHWARTZ: Right.

24 THE COURT: I will not permit him to construe the
25 document upon the state of the record. If you think something

1 useful is to be served by reading him a section of the document
2 as a predicate for a further question, I'll permit that,
3 namely, to get whatever you ask him in the question.

4 MR. SALZBERG: Okay.

5 **Q. Do you recall --**

6 MR. SALZBERG: Well, strike that.

7 **Q. I'll point you to the fourth bullet point on page 3 under**
8 **the left-hand column. Would it be fair to say that you -- a**
9 **strategic benefit under Section 363 was that dissenting parties**
10 **had significantly less ability to hold up a sale than under a**
11 **plan.**

12 MR. MILLER: Objection, Your Honor. Is he asking for
13 Mr. Wilson's conclusion or is that this exhibit says that? Mr.
14 Wilson is not an attorney and that is calling for a legal
15 conclusion.

16 THE COURT: I'm going to sustain that objection and
17 I'll hear the next question. What you've got to do, Mr.
18 Salzberg, is find out whether he formed either an independent
19 view that that statement was true or that he got that advice in
20 some means out of a privileged communication. I don't know
21 whether that's so or not but those are the areas where you can
22 appropriately inquire. But I won't ask him to construe a
23 document that he was neither the author of nor if he remembers
24 whether he saw it before his deposition was taken. And those
25 are the general parameters. I'll rule on specific objections

1 if and when they're made.

2 Q. Prior to the petition date, did you, as a member of the
3 auto team, form an opinion as to whether Section 363 provided a
4 strategic benefit as opposed to a plan confirmation process?

5 A. Yes.

6 Q. What was the strategic benefit that you determined was
7 available?

8 A. I believe there were a number of benefits to the 363
9 process three of which we discussed on Monday which were speed,
10 certainty and ability to be behind liabilities, did not have a
11 commercial necessity for the new enterprise.

12 Q. Was one of the benefits that you determined to exist --

13 MR. SALZBERG: Strike that.

14 Q. What about bargain -- the need to bargain with debt
15 holders? Was that a benefit that you determined would be
16 gained by the 363 process?

17 A. I think it depends on the context of your question, sir.
18 As evidenced by the process, we did bargain with parties in
19 interest. We bargained actively with the representatives of
20 the bondholders who consented to this transaction as
21 structured. So I don't think either the evidence or the
22 history suggest that we would not have to talk to individuals.

23 Q. You're breathing into that microphone again.

24 A. Sorry. I can't do both. I can't speak louder and not
25 breathe. Sorry.

1 THE COURT: On balance, I'd rather hear your
2 testimony than do without your breathing. If you think it's
3 possible for you to come up with the answer and then back off.

4 THE WITNESS: I'll do my best, sir.

5 THE COURT: I think maybe the best way will be
6 something upon which everybody in the room would have a
7 consensus. But do the best you can and everybody's going to
8 understand.

9 THE WITNESS: Yes, sir.

10 **Q. Was document Bondholder Exhibit number 2 -- was this**
11 **produced to you by your attorneys in the ordinary course of the**
12 **auto team's business?**

13 MR. SCHWARTZ: Objection. Foundation.

14 THE COURT: I'm going to overrule that. If they gave
15 it to you and you can remember it, you can answer. If you
16 don't remember, you can say so or if your answer is no, you can
17 say so. That doesn't go to either foundation or legal
18 inference. Did you get it or not? That's what I understand
19 the question as.

20 MR. SALZBERG: That's fair.

21 **A. I think I testified earlier today that I don't recall**
22 **whether I saw this prior to Monday.**

23 MR. SALZBERG: Excuse me one second, Your Honor.

24 **Q. When was the decision made by the U.S. Treasury that a 363**
25 **sale process would be employed?**

1 A. There was a constant dialogue in thinking through our
2 options. As you know, the bond exchange was pending up until
3 the last week of May. And we began to narrow our options over
4 the course of April and May as we approached the June 1 bond
5 maturity.

6 Q. Okay. So when was the ultimate decision made to employ
7 363 as opposed to a plan?

8 A. I think sometime in the month of May we included that if
9 the bond exchange was unsuccessful. And GM was not able to
10 restructure in an out of court basis as had been their
11 preference. The 363 was the only viable path forward for the
12 company.

13 Q. And who made that decision on behalf of the U.S. Treasury?

14 A. That was a product of discussions amongst a group of us.

15 Q. By "us", you're including yourself, Mr. Rattner and
16 outside counsel among others?

17 A. Among others, that's correct.

18 Q. Okay. And as you sit here today, can you tell me
19 specifically why, in your mind, 363 provided a strategic
20 benefit as opposed to the plan process?

21 A. Well, I think the answer, sir, is much broader than the
22 question. Just what provided a strategic benefit? There are a
23 whole host of considerations that went into our calculus.

24 Q. Okay. What were the whole host of considerations?

25 A. The fundamental question, sir, was can General Motors

1 survive anything approaching a traditional Chapter 11 process.
2 We talked to dozens of experts, industry consultants, people
3 who had observed General Motors for decades, obviously the
4 management team and a number of folks who are well-versed in
5 the bankruptcy process. And we could not find any reasonable
6 measure of -- in fact, I can't recall anyone off the top of my
7 head who felt that General Motors could survive a traditional
8 Chapter 11 process. One of the leading commentators on GM who
9 wrote the most recent book on General Motors, wrote it as
10 recently as May 26th, that we were making a tragic mistake in
11 pursuing the filing of General Motors. And so, it became clear
12 to us that a traditional Chapter 11 process would be so
13 injurious to this company as to not allow for its viability
14 going forward.

15 Q. What do you mean by a traditional bankruptcy process?

16 A. The Chapter 11 process.

17 Q. You talking about actually filing a bankruptcy case and
18 then proposing a plan and providing a disclosure statement?

19 A. That would be -- those would be the elements of it, yes.

20 Q. Okay. The time frame, in your opinion -- the auto team's
21 mind --

22 MR. SALZBERG: Well, strike that. Let me rephrase
23 that.

24 Q. When the auto team was considering the traditional
25 bankruptcy process, what was the time frame that the auto team

1 was thinking of in terms of how long the bankruptcy would take?

2 A. We thought that the earliest it could be when you run
3 through the various notice periods, it could be three months,
4 an extraordinarily quick process and that if any roadblocks
5 developed in the process or if the process spun out of control,
6 as many bankruptcies have, it could take many years.

7 Q. Okay. So you were thinking that the best case scenario
8 was ninety days, is that right?

9 A. I think that was a reasonable best estimate of what the
10 plan process would take.

11 Q. Okay. The government is providing DIP financing in this
12 case?

13 A. That's correct.

14 Q. Approximately, combined with the Canadian contribution, of
15 thirty-three billion dollars, is that right?

16 A. 33.3 billion, yes.

17 Q. 33.3. And the DIP fund --

18 A. Yeah. Back up.

19 Q. The DIP funding period goes through when?

20 A. I know that the sale order expires on July 10 -- or,
21 sorry, our funding expires and comes due on July 10th if the
22 sale order is not approved.

23 Q. Well, under the DIP budget that's been approved by the
24 Court last week, is it not true that it's a nine-week DIP
25 funding budget?

1 A. I think that's correct. I think that the last draw is
2 scheduled to be sometime in July.

3 Q. I have a copy of the DIP order with me and it provides an
4 Annex 1 to the budget, DIP financing, week ending August 2nd.
5 Does that -- I would ask the Court to take judicial notice of
6 the DIP order. But does that sound reasonable to you?

7 A. That sounds approximately right.

8 Q. Okay. All right. So ninety days out from a June 1 filing
9 would bring you to August 31, is that right?

10 A. I think it's technically August 29th or something, but
11 yes.

12 Q. Okay. All right. So it's a few weeks beyond the end of
13 the DIP funding period as approved by this final DIP order, is
14 that right?

15 A. Yes. If everything went perfectly smoothly and ninety
16 days was achieved, that is twenty-eight days beyond August 2nd.

17 Q. All right. Now you mentioned the July 10th deadline.
18 What is that deadline?

19 A. That is, I believe, the deadline for the approval of the
20 sale motion.

21 Q. And what happens if that deadline is not met?

22 A. Then our DIP would terminate.

23 Q. Is it your testimony that if the sale order is not entered
24 by July 10th that on July 11th the DIP funding will terminate?

25 A. As I testified several times when you asked me that

1 question, sir, we have no intention to further fund this
2 company if the sale motion is entered by July 10th.

3 Q. Okay. I understand that we had a deposition a few days
4 ago but we need to talk about the testimony today. Is it the
5 government's position that if the sale order is not entered on
6 July 10th that on July 11th the government will terminate the
7 DIP funding.

8 A. That's been our position, yes.

9 Q. Has that position been conveyed to General Motors?

10 A. I believe General Motors is well aware of our timeline and
11 our expectations that this process needs to be expeditious.

12 Q. So if there were public pronouncements by General Motors
13 representatives that it is unlikely that the government would
14 cease funding if the sale order was not entered on July 10th,
15 those public pronouncements would be incorrect?

16 MR. SCHWARTZ: Objection. If there are such public
17 pronouncements, we should see them.

18 THE COURT: I'll overrule that. You can answer it as
19 you see fit.

20 A. Sir, I'm not aware of any announcements that say that the
21 government is expected to fund for sixty to ninety days. I'm
22 aware of announcements that I believe that Mr. Henderson made
23 in one instance that I'm aware of that he expected the process
24 to extend sixty to ninety days but that was to accommodate
25 perceived antitrust filings.

1 Q. No. I understand, sir. But my question is that if public
2 pronouncements were made by General Motors that it is unlikely
3 that the government would cease funding on July 11th if the
4 sale order is not entered on July 10th, would those public
5 pronouncements be incorrect.

6 MR. MILLER: Is that a hypothetical question, Your
7 Honor? I object. Is there such a statement?

8 THE COURT: I'm going to sustain that objection. If
9 there is a particular statement that you want to point him to,
10 you can premise it on that. This fellow, unlike Repko, for
11 whom I authorized the hypothetical, is not an expert. That's a
12 distinction that is meaningful and that as a matter of
13 evidentiary law, I believe he's not here to testify as an
14 expert unless I'm missing something.

15 MR. SALZBERG: Your Honor, just by way of
16 explanation, on the way over, there were reports that I read on
17 my BlackBerry, news reports, where those public pronouncements
18 were made. If I may reserve my right, we're getting copies of
19 those articles as we speak.

20 THE COURT: Well, certainly, if you want to withdraw
21 the pending question and let me rule on that later, that's, of
22 course, acceptable.

23 MR. SALZBERG: Yes, Your Honor. If we would have the
24 right to recall Mr. Wilson for that --

25 THE COURT: Oh. You're talking about bringing him

1 back again?

2 MR. SALZBERG: Well, I would that --

3 THE COURT: Let's see where we are when this
4 examination is completed.

5 MR. SALZBERG: Okay. We're waiting for those
6 articles, Your Honor.

7 BY MR. SALZBERG:

8 Q. I would ask you to turn to page -- I'm sorry -- page 6 of
9 your declaration, paragraph 13. I'm going to ask you about the
10 end of that paragraph but please read the entire paragraph or
11 as much before and after as you need to. Okay. Do you see
12 that?

13 A. Yes.

14 Q. Okay. You state in your declaration that it's the
15 Treasury's belief that only a rapid and certain emergence from
16 bankruptcy can provide consumers with confidence, if necessary,
17 to make a major purchase like an automobile. What was the
18 Treasury's definition of the word "rapid"?

19 A. We were trying to do it in thirty, forty days, sir.

20 Q. Sorry?

21 A. We were trying to do it in thirty to forty days.

22 Q. You heard testimony -- were you in court yesterday?

23 A. Yes.

24 Q. Okay. And you heard testimony from Mr. Henderson
25 regarding pronouncements that GM would exit bankruptcy within

1 sixty to ninety days?

2 A. That is what he said publicly, yes.

3 Q. Okay. So is the sixty to ninety day emergence from
4 bankruptcy at odds with the Treasury's belief as to what is
5 needed for a rapid emergence?

6 A. You asked me the question of what we thought would be a
7 rapid emergence and what we expected. And I testified that it
8 was thirty to forty days.

9 Q. And I'm asking you the follow-up question whether or not
10 that differs from GM's pronouncement that it would likely exit
11 bankruptcy between sixty to ninety days.

12 A. I can't speak to Mr. Henderson's thinking, sir. I can
13 only suspect that he was trying to build some cushion in the
14 minds of the consumer which, obviously, is of paramount
15 concern.

16 Q. Okay. In the next sentence, you use the word "languish",
17 that "The Treasury cannot make an open-ended commitment to GM.
18 The Treasury will continue to fund GM's operations if GM's
19 critical assets languish in the bankruptcy process." What did
20 you mean by that?

21 A. I think "languish" means if they are residing in the
22 bankruptcy process for longer than is absolutely necessary.

23 Q. Okay. Was there a time period that the government had in
24 mind as to what would constitute languishing in the bankruptcy
25 process?

1 A. Beyond thirty to forty days.

2 Q. Okay. All right. Would it be fair to say that the
3 Treasury made a strategic decision that 363 allowed the sale of
4 good assets with providing a minimal opportunity for
5 objections?

6 A. No. I think I testified earlier that certainty and speed
7 were two primary considerations. But it wasn't without taking
8 note of considerations of the process. Obviously, if we
9 believed that there wasn't any impediment to a quick process,
10 we wouldn't have provided any consideration for OldCo, as an
11 example, which, as you know, the consideration is substantially
12 in excess of that which -- that would be taking OldCo through a
13 liquidation process.

14 Q. Okay. If you can turn back to Bondholder Exhibit 2 -- I
15 apologize for moving you back and forth between exhibits but
16 again, page 3 on Bondholder Exhibit 2. And under the Section
17 363 column, the fourth bullet point, did you come to a
18 conclusion prior to the filing of the bankruptcy that 363 would
19 provide significantly less ability of dissenting parties to
20 hold up the approval process?

21 A. I think that it's clear that in a 363, you don't have the
22 traditional voting requirements of a plan which is what allows
23 for the speed of a 363 process. So that was -- at least as I
24 understood that bullet and as we applied it to our own
25 thinking, how we thought about it.

1 Q. But it was the Treasury's thought that 363 -- the 363
2 process would provide less of an opportunity for objections to
3 the actual sale of the assets, is that right?

4 A. Sir, I think we've had -- you know, we spoke with every
5 party in interest who approached us before June 1st. We took
6 dozens of meetings of various constituencies ranging from
7 dealers to splinter unions to a whole host of different inter
8 parties in interest. We heard all their concerns and we spoke
9 with them throughout the process. And as part of this process,
10 I think all those parties in interest had the opportunity to
11 object which is obviously part of the process we're engaged in
12 right now.

13 Q. Right. But, respectfully, sir, I don't think you answered
14 my question. My question is was it the Treasury's position
15 that this 363 process that we're involved in right now would
16 provide less of an opportunity to object than a standard plan
17 confirmation process.

18 A. We believe the ability -- the time associated with it is
19 less. But on the core issues of valuation, for example, it is
20 my understanding, although I'm not an attorney, that the
21 ability to pursue questions of valuation are as meaningful in
22 the context of a 363 sale for the assets involved as they would
23 be in a plan of reorganization.

24 Q. And would I be correct in stating that the U.S. Treasury
25 saw a strategic benefit in using the 363 process because the

1 standards for the sale are lower than as in the plan
2 confirmation process?

3 MR. SCHWARTZ: Objection. Asked and answered.

4 THE COURT: Sustained.

5 MR. SALZBERG: Respectfully -- sorry.

6 Q. We talked about ceasing funding of the DIP on July 11th if
7 the sale order is not entered. Do you recall that?

8 A. Yes.

9 Q. Okay. On July 11th, what will the total amount of pre and
10 post-petition lending be by the government?

11 A. I'm not certain what it will be on July 11th. I know as
12 of roughly today, it's approximately ten or eleven billion
13 dollars post-petition. And 19.4 billion pre-petition.

14 Q. I'm sorry. You said --

15 THE COURT: Could you repeat those numbers, please,
16 Mr. Wilson?

17 THE WITNESS: Yes, sir. That as of, I believe,
18 today, or plus or minus twenty-four hours, that the amount of
19 post-petition financing is in the range of ten to eleven
20 billion dollars. Not all of that is from the U.S. Treasury.
21 Some of that is from our various Canadian partners. And that
22 the U.S. pre-petition financing was 19.4 billion dollars.

23 Q. Out of the ten to eleven billion dollars post-petition
24 financing, how much is that from the Canadian government?

25 A. I'm not sure off the top of my head, sir.

1 Q. Is it more than twenty-five percent of that amount?

2 A. If I had to guess, which is what you're asking me to do, I
3 would say it's between fifteen to twenty percent.

4 Q. Okay. So assuming twenty percent, we're talking about
5 post-petition financing from the U.S. Treasury of approximately
6 eight billion dollars, is that a fair estimate?

7 A. I think in that zip code, yes.

8 Q. Okay. So that would render the entire financing or the
9 entire loan amount both pre and post as of now around twenty-
10 seven billion dollars from the U.S. government, correct?

11 A. Assuming eight billion of post-petition, yes.

12 Q. Okay. If the DIP terminated on July 11th and assuming,
13 again, that we're talking about the same amount outstanding
14 that we just discussed, around twenty-seven billion dollars,
15 what is the U.S. Treasury's anticip -- what is the result that
16 the Treasury anticipates? What would happen?

17 A. What would happen in what regard, sir?

18 Q. Let me rephrase that. That was a horrible question. The
19 U.S. Treasury ceases its DIP funding on July 11th. What does
20 the Treasury anticipate would happen in this case?

21 A. In this bankruptcy case or in the case of General Motors
22 or in what?

23 Q. In this bankruptcy case.

24 A. I think it would be up to Judge Gerber to decide what
25 would happen in this bankruptcy case.

1 Q. Okay. If the case liquidates, if the company liquidates
2 on July 11th, what is the U.S. Treasury's expected recovery on
3 its approximate twenty-seven billion dollars of lending?

4 A. We have not performed a separate liquidation analysis.
5 But I don't have any reason to doubt the analysis performed by
6 Mr. Koch described yesterday.

7 Q. Okay. And based upon Mr. Koch's liquidation analysis,
8 what do you believe would be the U.S. Treasury's recovery on it
9 twenty-seven billion dollars of lending?

10 MR. SCHWARTZ: Objection. I just want to clarify
11 that Mr. Wilson testified that he doesn't know what the amount
12 of lending will be as of July 10th or 11th. The twenty-six
13 billion dollars was as of today.

14 THE COURT: I'm going to sustain that. When it gets
15 to be argument time, Mr. Salzberg, you can pull out that
16 liquidation analysis that Mr. Koch prepared and remind me of
17 the figure and to remind me that Mr. Wilson said that he had no
18 reason to doubt what Koch said. But I don't think this should
19 be a memory test of whether Mr. Wilson remembers what Mr. Koch
20 said.

21 MR. SALZBERG: Okay. Thank you, Your Honor.

22 Q. The unsecured claim in this case, do you know the total
23 approximate amount, what's projected at this time?

24 A. I do not know the projected amount.

25 Q. Is it true that the unsecured claim class is primarily

1 consisting of the bondholders' claims?

2 A. Under the terms of this transaction, that's correct.

3 Q. Okay. And what will the bondholders' recovery be from
4 this bankruptcy as a percent of the dollar amount of their
5 claim?

6 A. I think it depends, sir, on the equity performance of
7 NewCo since the primary asset of OldCo will be the equity and
8 warrants of NewCo.

9 Q. Okay. Now, there is a UAW retiree settlement that is part
10 of the sale motion, correct?

11 A. That's correct.

12 Q. And the debtor has scheduled the UAW retiree claim and one
13 of the largest unsecured claims in this case, is that correct?

14 A. I believe so.

15 Q. Okay. So the bondholders' claims are of the same priority
16 level as the retirees' claims, is that correct?

17 MR. SCHWARTZ: Objection. It calls for a legal
18 conclusion.

19 MR. SALZBERG: I'll withdraw, Your Honor.

20 Q. What will the retirees' recovery be from this bankruptcy?

21 A. Can you be specific? Which retiree, sir?

22 Q. UAW retirees.

23 A. As I believe we've discussed, we do not think about it in
24 the terms of a recovery in the sense that we negotiated a
25 commercial transaction to acquire the assets that will

1 constitute NewCo. As part of that commercial transaction, we
2 needed a skilled workforce to build cars since that would be
3 the primary business of NewCo. And as part of that negotiation
4 with the UAW as the only representative of that skilled
5 workforce, we structured a transaction as evidenced in the sale
6 motion filed on June 1st.

7 Q. Okay. There is reference in the sale motion that the --

8 MR. SALZBERG: Well, let me rephrase that.

9 Q. The collective bargaining agreement between Old GM and the
10 UAW was amended just recently, is that correct?

11 A. Yes.

12 Q. And the amended CBA was ratified by the union members
13 sometime in late May of 2009, is that correct?

14 A. Yes.

15 Q. And that amended CBA is now in force and effect, is that
16 right?

17 A. I do not know. I do not know if it's conditioned upon the
18 sale motion or not.

19 Q. Okay. Do you know of any provision in the amended
20 collective bargaining agreement with the UAW that makes its
21 enforcement or enforceability contingent upon the approval of
22 the UAW retiree settlement agreement?

23 A. I don't know.

24 Q. Okay.

25 MR. SALZBERG: Your Honor, if I may approach and show

1 the witness what is marked as Bondholders' Exhibit 3. And for
2 the record, this is my copy but there are no notations on the
3 relevant page.

4 THE COURT: Okay.

5 MR. MILLER: Can I have a copy?

6 MR. SALZBERG: It was introduced yesterday,
7 Bondholder Exhibit 3. It's the May 18th UAW -- page 12.

8 MR. MILLER: What page?

9 MR. SALZBERG: 12.

10 Q. First of all, do you recognize this document?

11 A. Yes, I do.

12 Q. Okay. And what is this document?

13 A. This is a document we also discussed on Monday that has --
14 I believe it was produced by GM in the context of the
15 negotiations with the UAW.

16 Q. Was it produced to the Treasury during the run-up to the
17 bankruptcy?

18 A. I don't know if this whole document was. I certainly
19 recall this page.

20 Q. I'm sorry.

21 A. I don't know if this whole document was. I certainly
22 recall this page.

23 Q. You saw that page prior to the bankruptcy?

24 A. I believe so.

25 Q. Okay. And that's page 12.

1 A. That's correct.

2 Q. Okay. And we were talking a minute ago regarding recovery
3 of the retirees from the bankruptcy process. Do you recall
4 that?

5 A. Yes.

6 Q. Okay. And that document, page 12, shows line item
7 recoveries of certain interest holders in the debtor, is that
8 correct?

9 A. It appears to, yes.

10 Q. Okay. And one of the line items, I believe the second
11 line item, refers to the retirees, is that correct?

12 A. Refers to the new VEBA.

13 Q. The new VEBA which is a trust fund to pay the medical
14 benefits of the UAW retirees, correct?

15 A. That's correct.

16 Q. Okay. And the last column, if you go to the right side,
17 has a recovery. It's entitled "Recovery", correct?

18 A. It's entitled "Percent Recovery", yes.

19 Q. Okay. And that actual percentage recovery was calculated
20 based upon an earlier proposal to the new VEBA, is that
21 correct?

22 A. I believe so, yes.

23 Q. And I believe, at that point, it was approximately a
24 fifteen percent share in the common stock of New GM, correct?

25 A. Among other things, yes.

1 Q. Yes. And I'm talking simply about the common stock. And
2 that later, the deal that was agreed to by the new VEBA that's
3 included within the UAW retirees' settlement agreement is
4 actually more advantageous to the new VEBA than the agreement
5 that's reflected on page 12, correct?

6 A. As is the bondholder deal. We were unsuccessful in
7 achieving the transaction we hoped to achieve.

8 Q. I'm asking specifically, sir, for the new VEBA line item.
9 The deal that's in the settlement agreement that's at issue now
10 is more advantageous to the new VEBA than the deal that's
11 reflected on page 12, correct?

12 A. They succeeded in having a higher percentage of the
13 equity, yes.

14 Q. I'm just looking for a yes or no.

15 A. I don't know what you mean by more advantageous, sir.
16 Higher --

17 Q. Better?

18 A. It's a higher percentage, sir.

19 THE COURT: There are lots of questions he asks which
20 are incapable of being answered yes or no. But I think the
21 last one is capable of being answered yes or no.

22 A. Yes.

23 Q. Okay. And that document that was in front of you was
24 prepared by whom?

25 A. I believe it was prepared by GM.

1 Q. Okay. And so GM, at least, was calculating recovery to
2 the new VEBA, correct?

3 A. In this page, yes.

4 MR. SALZBERG: May I have a moment, Your Honor?

5 THE COURT: Yes.

6 MR. SALZBERG: Your Honor, simply subject to my
7 request to ask Mr. Wilson some additional questions once we get
8 the news report in, I have no further questions.

9 THE COURT: All right. Who's next?

10 MR. BRESSLER: Your Honor, by agreement with the
11 committee and the unions, we'll examine next and Mr. Barkasy
12 would conduct it.

13 THE COURT: Sure. Come on up, please.

14 MR. BARKASY: Thank you, Your Honor.

15 THE COURT: Mr. Bressler, I didn't get your
16 colleague's name so that when he comes up to the microphone,
17 I'm going to ask him to repeat it.

18 MR. BARKASY: Your Honor, Richard Barkasy from
19 Schnader Harrison Segal & Lewis representing the ad hoc
20 committee of consumer victims of General Motors.

21 THE COURT: Okay. Go ahead, Mr. Barkasy.

22 CROSS-EXAMINATION

23 BY MR. BARKASY:

24 Q. Mr. Wilson, GM made significant efforts to restructure out
25 of court, is that correct?

1 A. Yes.

2 Q. And it was Treasury's preference that GM restructure out
3 of court, correct?

4 A. If it could be done so under the proper terms and
5 establish a viable GM, yes.

6 Q. In an effort to restructure out of court, GM extended a
7 bond exchange offer on or about April 27, 2009, correct?

8 A. Yes.

9 Q. The bond exchange offer was conditioned on, among other
10 things, the conversion to equity of at least fifty percent of
11 GM's U.S. Treasury debt as of June 1, 2009, correct?

12 A. The way it was structured, sir, was that that was what
13 General Motors had indicated in the exchange offer but it also
14 indicated that the Treasury not commit to that at this point.

15 Q. But that was what was included in the exchange officer
16 (sic) of the conversion of at least fifty percent of GM's U.S.
17 Treasury debt to equity?

18 A. Yes, I believe so.

19 Q. All right. And it was contemplated by Treasury that there
20 would be an exchange of Treasury debt to equity in some amount,
21 in some form, under the bond exchange offer, correct?

22 A. There had been discussions of it but at that point we had
23 not concluded that we were willing to do that --

24 Q. All right.

25 A. -- which is why it was structured the way it was.

1 Q. If GM's efforts to restructure out of court had been
2 successful, it would not have avoided liability for any
3 products liability claims, correct?

4 MR. SCHWARTZ: Objection. Calls for a legal
5 conclusion.

6 THE COURT: Sustained but if you want to get his
7 businessman's understanding, which trumps by any conclusions
8 that a lawyer might draw or that I might make, if you want to
9 amend your question that way, I'll permit it.

10 Q. Mr. Wilson, it is your understanding that if GM's efforts
11 to restructure out of court had been successful, it would not
12 have avoided liability for any products liability claims,
13 correct?

14 A. I believe that's correct, sir.

15 Q. Leading up to the bankruptcy filing, Treasury had
16 discussion with a number of stakeholders, including unsecured
17 bondholders, is that correct?

18 A. Yes.

19 Q. And as we saw from Exhibit Bondholder 3 that you testified
20 about a few minutes ago, those discussions had an impact on the
21 structure of the sale transaction that was ultimately proposed,
22 correct?

23 A. Yes.

24 Q. Products liability claims were identified by GM to
25 Treasury as being potentially politically sensitive, is that

1 correct?

2 A. If I could provide some context, sir. We had a planning
3 meeting on May 1st with the June 1 bond maturity staring at us
4 and developed a host of work streams. In the context of that I
5 asked the General Motors team to develop a list of viabilities
6 that we considered politically sensitive that we would consider
7 in the context of a 363 sale. And I explicitly asked them to
8 use an expansive use of that term.

9 Q. Products liability claims, given an expansive use of the
10 term, were identified by GM to the treasury as being
11 potentially politically sensitive, correct?

12 A. Yes.

13 Q. Treasury did not have any discussions before the
14 bankruptcy with any tort claimants or groups representing
15 products liability claimants, did it?

16 A. To the best of my knowledge, sir, we were never approached
17 by any groups representing them. We took, literally, dozens if
18 not over 100 meetings from various parties-in-interest. And
19 our general approach we said publicly and talked amongst
20 ourselves was to take basically any meeting. So I don't recall
21 and I'm not aware of any approaches that were received, nor of
22 any meetings that took place.

23 Q. Did you follow the Chrysler bankruptcy?

24 A. Yes, I did.

25 Q. And did you -- were you aware that there were groups

1 representing tort claimants who objected to the sale
2 transaction in Chrysler?

3 A. I was not aware of that.

4 Q. Did you review any of the Supreme Court filings made by
5 groups representing tort claimants?

6 A. I did not.

7 Q. Are you aware of any groups representing tort claimants
8 contacted GM and requested to have discussions regarding a
9 restructuring before the bankruptcy was filed?

10 A. I am not aware of any such contacts.

11 Q. Did Treasury do anything to determine who tort claimants
12 might be?

13 A. No, we did not.

14 Q. Did Treasury review any pleadings, or other documents
15 reflecting the larger tort claims that were pending against GM
16 while the negotiation of the sale transaction were ongoing?

17 A. Not that I'm aware of.

18 Q. The principal negotiators for GM -- let me ask one more
19 question. Did Treasury ask GM to identify for it any groups
20 that might represent tort claimants so that it could engage in
21 discussions with tort claimants?

22 A. No.

23 (Pause)

24 MR. BARKASY: May I approach, Your Honor, with a
25 binder of documents?

1 THE COURT: Yes, you may.

2 MR. BARKASY: Thank you.

3 Q. Mr. Wilson, this is a binder of ad hoc committee of
4 consumer victims of General Motors exhibits. Some of them have
5 already been utilized in the hearing. If you could turn to
6 Exhibit number 1, marked Exhibit AHCCV-01 on the bottom right-
7 hand corner, under tab 1. Did GM --

8 MR. BARKASY: And this is a letter from my partner,
9 Barry Bressler, to Mr. Miller dated April 7, 2009.

10 Q. Did GM make Treasury aware of Mr. Bressler's letter?

11 A. Not that I'm aware of.

12 Q. Did GM make Treasury aware of the existence of the
13 Committee of Consumer Victims of General Motors?

14 A. Not that I'm aware of.

15 Q. Please turn to Exhibit 2 in the binder, tab 2, marked
16 AHCCV-02 in the bottom right-hand corner.

17 MR. BARKASY: This is an April 9, 2009 letter from
18 Mr. Miller to Mr. Bressler.

19 Q. Did GM make Treasury aware of Mr. Miller's response to Mr.
20 Bressler's letter regarding the Committee of Consumer Victims
21 of General Motors?

22 A. Not that I'm aware of.

23 Q. Mr. Wilson, the principal negotiators for GM -- let me
24 start again. Who were the principal negotiators for Old GM?

25 A. In our conversation of Old as part of the transaction, the

1 principal negotiators was Mr. Henderson; Ray Young, the chief
2 financial officer; Walter Borst, the corporate treasurer; and
3 Mr. Bob Osborne, general counsel; as well as their advisors.

4 Q. And who were the principal negotiators for New GM?

5 A. As the purchaser it was representatives of the Treasury
6 Department and their advisors, including myself.

7 Q. At the time of the negotiations you anticipated that Mr.
8 Henderson, Mr. Young, and Mr. Borst would in all likelihood be
9 joining New GM, correct?

10 A. That is correct.

11 Q. Mr. Henderson would be the CEO of New GM if the sale
12 transaction is approved, correct?

13 A. That is correct.

14 Q. Mr. Wilson, do you still have in front of you Exhibit
15 Bondholder 3, which is the last document Mr. Salzberg -- I
16 think you have your hand on it right there.

17 A. Is this it?

18 Q. Yes, the May 18 --

19 (Pause)

20 Q. Please turn to page 12, this is what Mr. Salzberg was
21 questioning you about. Did Treasury perform a recovery
22 analysis similar to the recovery analysis contained on page 12
23 of this GM document?

24 MR. SCHWARTZ: Objection, asked and answered.

25 THE COURT: If that was asked and answered, I don't

1 recall it.

2 MR. SCHWARTZ: Mr. Wilson testified that Treasury had
3 never conceived of anything in terms of recoveries to
4 stakeholders and had to prepare its own -- hadn't thought of
5 things that way. In addition, if we get into the sort of
6 materials that Treasury prepared for its own internal
7 deliberations we run up against a governmental privilege
8 regarding internal government deliberative processes.

9 THE COURT: Well, that would be for the next question
10 that was asked by Mr. Schwartz.

11 MR. SCHWARTZ: Correct.

12 THE COURT: I'm going to overrule the objection. I'm
13 trying pretty hard to pay attention, and my inability to
14 remember that question and answer is going to be the basis for
15 my ruling.

16 A. Could you repeat the question?

17 Q. Sure. Did Treasury perform a recovery analysis similar to
18 the recovery analysis contained on page 12 of Exhibit
19 Bondholder 3?

20 A. Not similar to this. As we testified earlier, in the
21 context of the VEBA, it was really a discussion around what
22 they needed to do in order to ratify the agreement and become a
23 workforce of New GM. Is your question around the new VEBA or
24 is it around the bondholders/unsecured claims?

25 Q. I'm just asking did Treasury perform a recovery analysis

1 regarding U.S. Treasury, new VEBA, bondholders, existing
2 shareholders similar to the one that's contained on page 12 of
3 Exhibit Bondholder 3?

4 A. Not similar to this, sir, but we did think about the
5 recoveries to the OldCo creditors as part of the transaction.

6 Q. And the VEBA was a creditor of -- let me start that again.
7 The VEBA is a creditor of Old GM, correct?

8 A. Well, I believe the existing VEBA would be a creditor of
9 Old GM under the terms of our sale motion, but the new VEBA
10 would be, obviously, a new entity.

11 Q. The current UAW-VEBA is a creditor of Old GM, is that what
12 I take it?

13 A. Yes.

14 Q. It is not the United Autoworkers Union that is a creditor
15 of Old GM, correct?

16 A. I'm not certain of the exact legal relationship between
17 the VEBA and the UAW. I know as part of our discussions they
18 were intertwined throughout our discussions.

19 Q. You understand the claim held by the UAW VEBA against Old
20 GM to be a contractual claim, is that correct?

21 A. Yes, I believe so.

22 Q. And you understand the claim held by the UAW-VEBA against
23 Old GM to be an unsecured claim, correct?

24 A. I believe so, yes.

25 Q. Under the proposed sale transaction, if approved, it is

1 the VEBA trust that is going to be issued the common stock in
2 New GM, not the UAW, correct?

3 A. Yes.

4 Q. The UAW-VEBA is administered by a board of trustees,
5 correct?

6 A. I believe so.

7 Q. It is your understanding that the trustees of the UAW-VEBA
8 will ultimately decide what will happen to the stock to be
9 issued to the UAW-VEBA pursuant to the sale transaction, not
10 the union, correct?

11 MR. SCHWARTZ: Your Honor, please, I object to this
12 line of questioning on the grounds of relevance.

13 THE COURT: I'm going to overrule on relevance, but
14 sustain on lack of foundation. You have to establish whether
15 or not he has an understanding.

16 Q. Do you have an understanding as to who will decide what
17 will happen to the stock to be issued to the UAW-VEBA pursuant
18 to the sale transaction, if approved?

19 A. Not very much.

20 Q. Mr. Wilson, do you have a copy of your deposition
21 transcript still in front of you? If not, I'll give you
22 another copy.

23 A. Yes, I do.

24 Q. Please turn to page 108.

25 A. Sir, I must have different pagination.

1 Q. I will cure that to make sure --

2 A. Thank you.

3 (Pause)

4 A. Oh, I'm sorry, I was looking at my declaration, it was my
5 mistake.

6 (Pause)

7 Q. Mr. Wilson, if you could turn to page 108 at line 18,
8 where you're asked this question and did you give this answer?

9 "Q. Is it your understanding that the trustees of the UAW-VEBA
10 will ultimately decide what will happen to the stock issued to
11 the UAW-VEBA, not the United Autoworkers Union?

12 "A. Yes, that is my understanding."

13 Were you asked that question and did you give that answer?

14 A. Yes.

15 Q. You understand that the UAW-VEBA's pre-petition unsecured
16 claim against GM is about approximately twenty billion dollars,
17 correct?

18 A. I understood it to be slightly higher than that, but in
19 that zip code.

20 Q. In excess of twenty billion dollars?

21 A. Yes.

22 Q. If the sale is approved the UAW-VEBA will no longer have a
23 twenty billion dollar claim against GM, correct?

24 A. I believe they agreed to release their claim as part of
25 the sale.

1 Q. And if the sale is approved the UAW-VEBA will receive 17.5
2 percent of the common equity in New GM plus other
3 consideration, correct?

4 A. Yes.

5 Q. You understand that the unsecured claims, including those
6 of bondholders against GM exceed thirty billion dollars,
7 correct?

8 A. I'm not sure what the ultimate resolution will be, but I
9 recognize that the bonds are twenty-seven to twenty-eight
10 billions and there are other claims.

11 Q. How much of the common equity do unsecured creditors
12 receive under the sale transaction?

13 A. The creditors of OldCo as part of the sale transaction
14 will receive ten percent of NewCo plus warrants in two
15 tranches. The first tranche is for seven and a half percent of
16 NewCo at a strike price of fifteen billion dollars, and with a
17 seven year maturity. And a second tranche, another seven and a
18 half percent of NewCo ten-year maturity at a thirty billion
19 dollar strike price.

20 Q. Is it your understanding that the retirees cover under the
21 UAW-VEBA will be the same retirees covered under the new VEBA
22 that will be established pursuant to the sale transaction, if
23 approved?

24 A. Other than new retirees and unfortunate deaths, I believe
25 so, yes.

1 Q. The purchase agreement has been modified such that New GM
2 will now be assuming responsibility for future products
3 liability claims, correct?

4 MR. SCHWARTZ: Objection. Could we get a definition
5 for what Mr. Barkasy means by future products liability?

6 THE COURT: Yes, especially in light of all the areas
7 where I asked a slice and dice distinction.

8 MR. BARKASY: Just trying to speed things up a bid.

9 THE COURT: No, I understand that. Different kinds
10 of combinations are not insignificant in this case.

11 MR. BARKASY: I understand, Your Honor.

12 Q. Mr. Wilson, the purchase agreement has been modified in
13 regards to the products liability claims to be assumed by New
14 GM, correct?

15 A. Yes.

16 Q. What is your understanding of the modification?

17 A. My understanding is that as of the documents filed on June
18 1st, NewCo would not assume responsibility for the product
19 liability lawsuits as a result of cars sold prior to the
20 closing, but with accidents incurred post-closing. And that
21 the modification we made was that NewCo would, in the revised
22 documentation, would assume responsibility for those lawsuits.

23 Q. Did New GM agree to the modification because of concerns
24 that it had regarding consumer confidence?

25 A. That was part of it. As a general matter, sir, we

1 approached all the liabilities we agreed to assume what was
2 commercially necessary for the success of NewCo. And as we
3 considered the various options prior to June 1st, we actually
4 had an active debate with our team about the product liability
5 associated with cars purchased before June 1st, but with
6 accidents and claims occurring post-closing. And, obviously,
7 for each one conclusion in the days leading up to June 1st and
8 then upon further consideration, I've reached a different
9 conclusion.

10 Q. Would consumer confidence be enhanced if New GM also
11 assumed responsibility for products liability claims arising
12 from accidents that occurred pre-bankruptcy filing?

13 MR. MILLER: Objection, Your Honor. Mr. Wilson is
14 not an expert on consumer --

15 THE COURT: Sustained.

16 Q. Did the Treasury conduct any market research to determine
17 whether consumer confidence would be enhanced if New GM also
18 assumed responsibility for products liability claims arising
19 out of accidents that occurred before the bankruptcy?

20 A. No, we make a decision based on our business judgment.

21 Q. Did Treasury seek out the advice of any experts to
22 determine whether consumer confidence would be enhanced if New
23 GM would also assume responsibility for products liability
24 claims arising pre-bankruptcy?

25 A. We had sensitive discussions with the management team who

1 were the closest things to experts that we had in that regard.

2 Q. And that's the management team that's going to be moved
3 over to New GM if the sale's approved, correct?

4 A. Most of them, yes.

5 Q. You would agree that New GM would remain viable if it
6 assumed responsibility for tort claims arising before the
7 bankruptcy was filed, wouldn't you?

8 A. As we discussed the other day, we did not see it as our
9 obligation to take on claims to the point at which New GM was
10 no longer viable. It wasn't a determination, or frankly, a
11 consideration in our thinking. Our thinking is a commercial
12 buyer of the assets that will constitute NewCo was to assess
13 what viabilities were commercially necessary for the success of
14 NewCo. And any other liabilities from our perspective were --
15 should not be part of the transaction.

16 Q. You would not quarrel with Mr. Henderson's business
17 judgment as to whether New GM would be viable if it assume
18 responsibility for products liability claims arising before the
19 bankruptcy was filed, would you?

20 A. Well, I'd quarrel with the approach, because the test
21 cannot be any one liability, if it were assumed would be the
22 difference between viability and lack of viability. Of course,
23 on that basis, there are a number of things that could easily
24 fall within the bucket of not tipping the balance between
25 viability and not viable. Our job is to create the most

1 attractive NewCo we possibly can. And any one liability,
2 whether it's one of dollar -- 100 million dollars, even a
3 billion dollars, may of may not tip the balance, but that's not
4 the exercise we ever engaged in.

5 Q. So you never sought to determine -- well, let me ask this
6 question. If New GM assumed an additional 950 million dollars
7 in obligations, would it still be viable?

8 MR. MILLER: Objection again, Your Honor. Mr. Wilson
9 is not an expert as to viability.

10 THE COURT: I'm going to sustain it.

11 Q. As part of its consideration of the sale transaction did
12 the Treasury seek to determine how much debt New GM could carry
13 and still remain viable?

14 A. We had some discussion around the proper capital structure
15 for New GM.

16 Q. And you were part of that, correct?

17 A. Yes.

18 Q. And you, yourself, performed analyses of the appropriate
19 capital structure and how much debt New GM could carry and
20 remain viable, correct?

21 A. I supervised and discussed analyses, but did not perform
22 them myself.

23 Q. Did during the course of -- in supervising and discussing
24 analyses did the Treasury consider whether New GM would have
25 remained viable if it assumed responsibility of tort claims

1 arising before the bankruptcy was filed?

2 MR. SCHWARTZ: Objection, Your Honor. This really
3 does now begin to invade the government's deliberative process
4 privilege. He's asking how the Treasury came about reaching
5 its decision.

6 THE COURT: Unless you show me some more to the
7 contrary, we'll deal with it the same way we deal with
8 attorney-client privilege area. I would rule that he can't be
9 required to discuss the substance of those communications, but
10 he can answer whether the subject matter was discussed.

11 A. Can you repeat the question?

12 Q. I'll try. In the course of your supervision of and
13 discussion of analyses of the capital structure of New GM, did
14 you seek to determine whether New GM would be viable if it
15 assumed responsibility for products liability claims arising
16 before the bankruptcy was filed?

17 A. No, we never tried to apply that standard.

18 (Pause)

19 Q. Is it fair to say that from Treasury's perspective, as the
20 purchaser of assets of Old GM Treasury was not concerned with
21 the relative priority of liabilities under the Bankruptcy Code?

22 A. I think that's fair to say, we're focused on which assets
23 and which liabilities we needed for the success of New GM.

24 Q. And you did not believe under a 363 sale the relative
25 priority of liabilities was relevant, correct?

1 A. That was my understanding, yes.

2 Q. What is the standard that Treasury applied in determining
3 which liabilities to assume and which liabilities that it would
4 not assume?

5 MR. MILLER: Your Honor, please, Mr. Wilson has
6 answered that question in four different versions.

7 MR. BARKASY: I have one more question, it's a
8 predicate for the next question. I don't want to face a
9 foundation argument.

10 THE COURT: I'm going to sustain the objection with
11 the corollary that is I won't give you too much heat on the
12 predicate -- or on the foundation assuming the next question's
13 otherwise fair.

14 Q. Treasury is not a run of the mill commercial asset
15 purchaser, is it?

16 A. I'm not sure that run of the mill commercial asset
17 purchaser would like that comparison. But I think, no, it's
18 probably not the right way to describe us.

19 Q. And it's not an average commercial lender, is it?

20 A. I don't think so.

21 Q. And there were considerations in Treasury's decision to
22 invest in GM beyond those that would normally apply to a
23 commercial asset purchaser or commercial lender, is that
24 correct?

25 A. Sir, I think that the way we approach this entire

1 transaction, particularly once our team was developed, which
2 was not, as you know, at the very beginning of Treasury's
3 involvement at General Motors. Because our team was developed
4 to approach the entire transaction on a commercial basis.

5 Q. Mr. Wilson, I don't have any further questions, thank you.

6 MR. BARKASY: Your Honor, absent objection, I would
7 move Exhibits 1 and 2, the letters from Mr. Bressler to Mr.
8 Miller and Mr. Miller's response, into evidence.

9 THE COURT: Any objection.

10 MR. MILLER: No objection.

11 THE COURT: They're admitted.

12 (AHCCV's Exhibit 1, letter from Mr. Bressler to Mr. Miller,
13 was hereby received into evidence as of this date.)

14 (AHCCV's Exhibit 2, response of Mr. Miller to Mr. Bressler was
15 hereby received into evidence as of this date.)

16 THE COURT: All right. Let's try to keep moving
17 forward. We've been going almost two hours.

18 How long do you think you're going to be, Mr.
19 Jakubowski?

20 MR. JAKUBOWSKI: Very short, no more than ten
21 minutes, I would think.

22 THE COURT: All right. Then let's continue and then
23 we'll take a short break.

24 MR. JAKUBOWSKI: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JAKUBOWSKI:

2 Q. Good morning, Mr. Wilson.

3 A. Good morning.

4 Q. I'd like to mark as PLCA Exhibit 2 a document that is an
5 e-mail and attachment from Mr. Worth to you, Mr. Wilson, that
6 attaches a -- that was the subject matter warrant strike price
7 calculation.

8 MR. JAKUBOWSKI: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 THE WITNESS: Thank you.

12 Q. Do you recall seeing this document before at your
13 deposition, Mr. Wilson?

14 A. Yes.

15 Q. And Mr. Worth is with Evercore, correct?

16 A. Yes.

17 Q. And he's the same gentleman who testified yesterday,
18 correct?

19 A. Yes.

20 Q. And page 2 of this is a spreadsheet that identifies the
21 shares that are expected to be issued under the proposed
22 transaction, correct?

23 A. Yes.

24 Q. Along with the warrants, correct?

25 A. Yes.

1 Q. And would you say this is a fair representation to the
2 best of your knowledge of the shares and warrants that are
3 going to be issued under the proposed transaction as it exists
4 today?

5 A. Yes, I believe so.

6 Q. And the bottom line is that the U.S. Government on a fully
7 diluted basis will always remain in control of the purchaser,
8 correct?

9 A. Well, on this basis, yes. But there is the opportunity
10 for share sales by the company or share sales by us.

11 Q. Understood. But certainly with respect to the closing
12 date, on a fully diluted basis, Treasury is in control of the
13 purchaser?

14 A. Yes.

15 Q. And as a result of that, it would have the opportunity, I
16 take it, to select members to the board of directors?

17 A. That's correct.

18 Q. Okay. And to ultimately determine who management is,
19 correct?

20 A. The board will not have the exact mechanics -- but
21 certainly the board will ultimately be able to determine that
22 and we would expect them to have that authority.

23 Q. Okay. Thank you. Now, I take it that it is Treasury's
24 believe that the value of GM as it exists today whether on a
25 liquidation or going concerns basis is less than the value of

1 Treasury's debt?

2 A. Yes.

3 Q. And as a result of that it believes that in a 363 sale it
4 really is entitled to everything of GM, correct?

5 A. Yes.

6 Q. Except for the senior secured debt?

7 A. That's correct.

8 Q. And so I take it that from Treasury's perspective,
9 everything that it gives away in cash with a proposed
10 transaction is virtually in the nature of a gift?

11 A. I wouldn't use exactly those terms because, from our
12 perspective, there was a transaction that we needed to get done
13 and we did what we thought was commercially necessary to
14 facilitate that transaction, including, as you know, our
15 negotiations with the UAW.

16 Q. So it's fair to say then that you basically gave away the
17 least amount that you needed to give away in order to get a
18 deal done, correct?

19 A. That was our intention, yes.

20 Q. And to that extent the relative priorities of the various
21 creditor classes in Old GM were irrelevant to the purchaser,
22 correct?

23 A. That's correct. We focused on which assets we wanted to
24 buy and which liabilities were necessary for the commercial
25 success of New GM.

1 Q. So I would like to direct your attention to yesterday's
2 binder, which has Mr. Henderson's transcript in there.

3 Let me try to help you.

4 A. Thank you.

5 (Pause)

6 MR. JAKUBOWSKI: Your Honor, I believe it's in a
7 binder that says "Exhibits 9 through 12, Deposition
8 Transcripts".

9 THE COURT: Yes.

10 MR. JAKUBOWSKI: And in there is Exhibit 10.

11 THE COURT: Right.

12 MR. JAKUBOWSKI: And from there if you go to Tab 6,
13 which is the contingency planning of the 363 analysis.

14 THE COURT: Okay.

15 Q. And what I'd like to do, Mr. Wilson, is please direct your
16 attention to PowerPoint pages 10 and 11.

17 (Pause)

18 Q. Now, this exhibit contains -- these pages contain an
19 identification of the liabilities on the balance sheet of
20 General Motors at 12/31/08, do you see that?

21 A. Yes, I do.

22 Q. And you see that there is also in the far-right column a
23 description of what's going to happen to those liabilities in a
24 363 scenario, correct?

25 A. I think these were scenarios that General Motors had run

1 to illustrate that at the early stages of planning, yes.

2 Q. But it's at least a good reference to the kind of
3 categories that Treasury and GM were considering while they
4 were negotiating over the kinds of the relative priorities of
5 treatment of various creditor classes, correct?

6 A. I think this is a -- I'm not sure I heard your entire
7 question. I think this is a full catalogue of all the
8 liabilities in the company's balance sheet.

9 Q. And the question that was posed to Treasury and GM was
10 which liabilities is Treasury going to assume and which
11 liabilities is Treasury not going to assume?

12 A. If we were to pursue a 363 sale, yes.

13 Q. Which is where we are, correct?

14 A. Yes.

15 Q. So if you look down the column that says 363 scenario you
16 see that there is a sub column for OldCo right?

17 A. Yes.

18 Q. And sub column for NewCo?

19 A. Yes.

20 Q. And the OldCo column represents, effectively, the
21 liabilities that will be left behind in the sale, correct?

22 A. I believe so.

23 Q. And the NewCo column would represent the liabilities that
24 will be assumed, correct?

25 A. Yes.

1 Q. Now, if you look at, for example, line 2 for accounts
2 payable, don't those reflect the unsecured trade payables of
3 GM?

4 A. As of the December 31 balance sheet, I believe that is
5 correct, yes.

6 Q. And it's the intention of the purchaser to assume all of
7 those liabilities at closing, correct?

8 A. I do not believe that's correct, sir. I believe that's
9 what this document suggests, but I don't believe that's
10 actually what we intend to do.

11 Q. Aren't most of the pre-petition unsecured liabilities of
12 trade vendors going to be assumed as part of the sale?

13 A. Most practically, you said all in you question.

14 Q. I apologize. And you're absolutely right. Most of them
15 are, though?

16 A. Yes. And the reason, of course, is because those
17 suppliers are critical to the operations of General Motors.

18 Q. Okay. And with respect to the pension obligations, OPEB,
19 same thing, you have a lot of unsecured debt that is going to
20 be assumed by NewCo, correct? Under the current deal?

21 A. A lot of it. But I believe we made a number of changes to
22 a number of these categories over the course of May.

23 Q. But there still is a significant amount of pension debt
24 that is going to be assumed by NewCo, correct?

25 A. Yes.

1 Q. And that is all unsecured?

2 A. Yes.

3 Q. Okay, that's fine. Thank you.

4 (Pause)

5 Q. You talked earlier about the fact that Treasury had come
6 to a decision that it would assume certain claims related to
7 accidents that occur after the closing date, correct, for
8 product liability claims?

9 A. Yes.

10 Q. And have you at any time, until sitting hear today, ever
11 advised anyone at the debtor that there would be any change in
12 the purchase price as a result of that decision?

13 A. At this point we have not.

14 MR. JAKUBOWSKI: No further questions, Your Honor.

15 THE COURT: Okay. Let's take ten minutes and
16 continue with anyone else who wants to do a cross. Before I
17 finish speaking, I would appreciate it if you not get up. Mr.
18 Wilson, while we're in recess, keep to yourself. And we'll
19 continue --

20 MR. MILLER: Your Honor, can we ask how many more
21 interrogators there are?

22 THE COURT: All right, I think that might be helpful
23 for all of us.

24 MR. JAKUBOWSKI: Your Honor, I move to admit PLCA 2
25 into evidence.

1 THE COURT: Is there any objection.

2 MR. MILLER: Okay, that's admitted.

3 (PLCA's Exhibit 2, e-mail from Mr. Worth to Mr. Wilson, was
4 hereby received into evidence as of this date.)

5 THE COURT: How many other people are going to want
6 to question Mr. Wilson on cross? All right. Five. We'll
7 continue in ten minutes.

8 MR. MILLER: Thank you, Your Honor.

9 (Recess from 11:09 a.m. until 11:23 a.m.)

10 MS. DAVIS: Good afternoon, Your Honor. Tracy Hope
11 Davis for the United States trustee. I'm here to introduce
12 Alan Shapel who is the ombudsmen who has delivered a report to
13 us with respect to the sale. We wanted to introduce him with a
14 consent of the debtor and the committee. We just wanted to
15 give you a moment to say hello.

16 THE COURT: Certainly. You said Shapel.

17 MR. SHAPEL: Yes, sir.

18 THE COURT: Good morning, Mr. Shapel.

19 MR. SHAPEL: My firm is called Shapel & Associates,
20 and I was appointed by the U.S. trustee's office as the privacy
21 ombudsmen. And my role here is to, among other things, is
22 assist the Court that the transfer of personally identifiable
23 information is contemplated by debtor, is done so in accordance
24 with applicable law. And to that end I've compiled a report
25 which to my understanding either has been filed or will shortly

1 be filed, so that Your Honor is free to review the entire
2 report.

3 I'm happy to go into as much detail as Your Honor
4 would like, but I thought I would begin with a very high level
5 overview of my recommendations and that should take
6 approximately five to seven minutes, if that's okay with you,
7 Your Honor.

8 THE COURT: People okay with interrupting here with
9 that overview?

10 MR. MILLER: Yes, Your Honor.

11 THE COURT: Okay; go ahead.

12 MR. SHAPEL: I do have additional copy right now if
13 Your Honor would like to --

14 THE COURT: Okay.

15 MR. SHAPEL: May I approach?

16 THE COURT: Yes.

17 MR. SHAPEL: So, essentially, my role is to evaluate
18 what, if any, representations were made by debtor to consumers
19 at the point that the consumers were making their consent
20 decisions. So in other words, did debtor adequately inform
21 consumers regarding how the debtor would use their information.
22 And as the transfer of consumer information is contemplated
23 here in accordance with debtors' representations.

24 So I've reviewed under other documents GM's privacy
25 policy, the privacy policy of the Chevrolet Saturn dealership

1 in Harlem, and the privacy policies of several thousand of GM's
2 independent dealership.

3 I also had multiple conference calls and e-mail
4 exchanges with debtor and debtors' counsel to help me
5 understand debtors' privacy practices.

6 So most of the information at issue here was
7 collected under GM's privacy policy. This includes the
8 information contained within GM's master customer relationship
9 management database. So GM's privacy policy did not
10 specifically address the transfer of information per a
11 bankruptcy proceeding, therefore, I'm recommending to the Court
12 that the Court require GM to notify those consumers who had
13 provided their information under GM's privacy statement that
14 such information will be transferred into New GM and that New
15 GM provides those consumers with the opportunity to opt-out of
16 such transfer.

17 THE COURT: You mean to tell Old GM that it doesn't
18 want New GM to know about?

19 MR. SHAPEL: To provide them with the opportunity so
20 that Old GM is not allowed to transfer their information into
21 New GM. Now, in my experience as a privacy professional, Your
22 Honor, the percentage of consumers that will exercise that type
23 of opt-out choice is very low. And, specifically, here we're
24 talking about the GM CRM database, which is essentially used
25 for marketing purposes. So to be clear, we're not talking

1 about information that's used for warranty purposes or for
2 recall purposes or for a host of reasons which would be a
3 public policy.

4 THE COURT: To continue to get that information. So
5 if there's something they need to know about their cars, they
6 would get it.

7 MR. SHAPEL: Correct. So regarding the information
8 collected by the Harlem Dealership my recommendation is the
9 same. Provide those consumers with some notification and offer
10 them opt-out choice.

11 There were also several thousand dealerships that
12 have been already offered deferred termination pursuant to an
13 agreement between those dealerships and GM. While typically in
14 bankruptcy proceedings, privacy ombudsmen will only look at the
15 privacy representations made specifically by debtor, and here
16 these representations were made by debtors' independent
17 dealerships.

18 However, here the agreement between GM and what I'm
19 calling the deferred termination dealerships stipulates the
20 transfer of consumer information that was collected by those
21 dealerships to New GM. And potentially, the transfer of
22 information to other of GM's independent -- or New GM's
23 independent dealerships.

24 So in light of this I thought it was appropriate to
25 review the representations made by the deferred termination

1 dealerships and include that analysis in my report.

2 So to that end, I obtained a confidential list of the
3 deferred termination dealerships from GM. Most of those
4 deferred termination dealerships posted privacy policies that
5 were substantially similar to GM's privacy policy and the
6 privacy policy of the Harlem dealerships. So my recommendation
7 there is the same. That for those consumers that they be
8 offered notice and opt-out choice.

9 However, there were about fifty of the deferred
10 termination dealerships that had privacy policies that in my
11 opinion prohibited the transfer of information as contemplated
12 today. For those dealerships my recommendation to the Court is
13 slightly different. Require GM and New GM to provide notice to
14 those consumers. However, require GM to obtain what is known
15 as their affirmative consent of those consumers, opt-in
16 consents or their permission, before one of two things
17 happening. Before the transfer of those consumers' information
18 from GM to New GM, again for marketing purposes. Or number 2,
19 before the transfer of information from a deferred termination
20 dealership to the new dealership.

21 Did I state that clearly enough, Your Honor? I know
22 there's a lot there.

23 THE COURT: I understand what you're saying.

24 MR. SHAPEL: All right. Good. Okay. So that, in
25 summary, is what my recommendation is to the Court. I'm happy

1 to go into some of the specific laws that we addressed both at
2 a federal and state level. But, again, that's covered in
3 pretty good detail in the report.

4 THE COURT: Subject to people who want to be heard,
5 I'm confident that you -- Mr. Miller, do you or any of your
6 folks or any parties-in-interest, want to come on what he said?

7 MR. MILLER: No, Your Honor. We really didn't have
8 an opportunity to review the report, but I don't have any
9 comments at the present time.

10 THE COURT: Okay. All right. Thank you very much,
11 Mr. Shapel.

12 MR. SHAPEL: Thank you, Your Honor.

13 THE COURT: I think that you always have to have the
14 opportunity to be here and then we'll figure out what, if
15 anything to do, or if anybody has any type of different
16 perspective to your report.

17 MR. SHAPEL: Okay. Thank you, Your Honor. May I be
18 excused?

19 THE COURT: Yes, you may.

20 MR. SHAPEL: Thank you.

21 THE COURT: Okay. Back to cross-examination. Is it
22 Mr. Esserman?

23 MR. ESSERMAN: Thank you, Your Honor. I just have a
24 few minutes of cross-examination.

25 CROSS-EXAMINATION

1 BY MR. ESSERMAN:

2 Q. Mr. Wilson, my name is Sandy Esserman, and I represent the
3 ad hoc committee of asbestos claimants. And have a few
4 questions for you. First, I'd like to discuss the wind down
5 expenses in this estate. I believe you address that in your
6 declaration, is that correct?

7 A. I believe so.

8 Q. And the wind down expenses for the estate is estimated by
9 you -- at least the government has agreed to so far, is 950
10 million dollars, is that correct?

11 A. As of the date of my declaration, yes.

12 Q. Okay. Has that changed?

13 A. Well, there's been -- I think you may be aware from
14 yesterday's testimony, there is an ongoing dialogue between
15 ourselves and the AlixPartners team as the fiduciaries and
16 representatives for OldCo as to what the appropriate amount
17 would be.

18 Q. And is that -- has that amount been determined, or is
19 that -- are those negotiations continued?

20 A. They're continuing.

21 Q. Do you know when they'll be concluded?

22 A. We believe they'll be concluded very soon. Frankly,
23 they've been a little bit delayed because my participation is
24 integral to that conclusion, and I was obviously been
25 committing time here. My expectation is that as soon as I'm

1 done here, I would be able to reengage in those discussions.
2 And our expectation would be that we would likely conclude them
3 as soon as Friday morning.

4 Q. Would you anticipate then that those discussions would be
5 concluded prior to the time that the sale, to the extent this
6 Court determines to approve it, would be approved?

7 A. I can only speculate on the latter, because that's
8 obviously Judge Gerber's decision. But on the former we would
9 work as expeditiously as possible and would commit to not
10 creating any delays as a result of that.

11 Q. Okay, thank you. Let's talk a little bit about claims of
12 people who have received asbestos disease as a result of
13 exposure to General Motors' products, I'd like to discuss that
14 subject with you.

15 Are you aware that there's been a report that General
16 Motors, in fact, put in their 10K and I believe 10Q from HR&A
17 that provides for a 650 million dollar approximate estimate of
18 future claims over the next ten years?

19 A. I'm familiar with that estimate, I'm not familiar with the
20 underlying work to a significant extent, but I'm familiar with
21 the number.

22 Q. Okay. Are you generally familiar with the asbestos claim
23 against GM, what they're based on?

24 A. Not in any great level of detail, no.

25 Q. But generally, as a result of exposure to asbestos in

1 brakes, are you generally familiar with that?

2 A. Yes, I'm familiar with that part of the issue.

3 Q. And one of the things you're asking this Court to do is to
4 sell this Old GM to New GM free and clear of any asbestos
5 claims, is that your intention?

6 A. Yes.

7 Q. And you're aware that there are claims that are going to
8 occur at various points in the future, that is the people that
9 have been exposed to GM asbestos?

10 MR. MILLER: Objection. I just want to be clear when
11 Mr. Esserman uses the word claim, he's not using that
12 necessarily in the Bankruptcy Code context, but --

13 MR. ESSERMAN: That's correct.

14 MR. MILLER: -- current to the annual?

15 MR. ESSERMAN: Yes.

16 THE COURT: All right. It's clarified by Mr.
17 Esserman. Do you remember the question?

18 A. Can you please repeat it?

19 Q. Let me start over and break it down a little bit, Your
20 Honor, in a couple of different sections. You're aware that
21 there's currently lawsuits on file against General Motors based
22 on claims of exposure to asbestos from GM products, is that
23 correct?

24 A. Yes.

25 Q. And you're aware, in fact, based on the HR&A report that

1 there will be such claims post-sale in the future that will
2 arise?

3 A. Again, I'm not --

4 MR. MILLER: Please. The 650 million dollars, first
5 of all, Your Honor, are not claims. The include the cost of
6 defense. And there is no concession that these are valid
7 claims, in any sense of the rule.

8 MR. ESSERMAN: I'm not seeking a determination of the
9 validity.

10 THE COURT: I understand that. And on the one hand
11 I'm going to sustain the objection. But on the other hand, it
12 would be helpful if everybody understands that I'm generally
13 aware of the issues. Mr. Esserman, either be more precise in
14 your questions. Don't try to monetize them, we have to
15 monetize them. (Inaudible)

16 MR. ESSERMAN: That's fine. Let me attack it simpler
17 and briefly, Your Honor.

18 BY MR. ESSERMAN:

19 Q. To the extent there are any claims that arise post-sale,
20 would it be the intention of you, as the purchaser, or the
21 government as the purchaser that anyone that has a claim or
22 demand based on asbestos exposure be asserted against OldCo
23 rather than NewCo?

24 A. Well, if I could answer your question this way, NewCo is
25 not acquiring any of the liabilities associated with any of the

1 asbestos claims.

2 Q. And that's a decision that has been made by the Auto Task
3 Force?

4 A. As we've reviewed all the liabilities that we can pick and
5 choose from in the context of the General Motors' balance
6 sheet, we applied that same commercially necessary
7 determination to each of them. And may of these cases, and
8 some cases obviously quite tragic, we did not feel that any of
9 them had a commercial bearing on the future success of New GM.

10 Q. Okay. So just so I'm clear and I'm almost done with my
11 questions here, to the extent that there's a claim that arises
12 in the future based on asbestos exposure to a GM product, it
13 is -- you're requesting that this Court not pass that claim to
14 NewCo, but that it remain with OldCo, is that correct?

15 A. That's correct.

16 MR. ESSERMAN: Thank you, Your Honor.

17 THE COURT: Mr. Eckstein.

18 (Pause)

19 CROSS-EXAMINATION

20 BY MR. ECKSTEIN:

21 Q. Mr. Wilson, good morning. My name is Kenneth Eckstein,
22 I'm representing the official creditors' committee in this
23 case.

24 Let me just start by returning to the question that you
25 were asked a moment ago with respect to the wind-down budget.

1 You were in Court yesterday and you heard Mr. Koch's testimony
2 with respect to the status of that budget, am I correct?

3 A. Yes, I did.

4 Q. And is it my understanding that you're working principally
5 with Mr. Koch and his team in order to, I guess, refine the
6 estimate of the wind down expenses?

7 A. The status so far has been that members of my team and
8 members of Mr. Koch's team have been working together on
9 exactly that. And I have not, because I hadn't gotten to the
10 point where it was ready for me, frankly, had not yet gotten
11 involved in any level of detail.

12 Q. And is it fair for me to assume that the goal of this
13 exercise is to try to refine the estimate of the wind down
14 expenses so that ultimately the wind down expenses can be
15 satisfied in full with the amount of revised DIP loan that's
16 provided to this estate?

17 A. That's correct. As we indicated in our discussions with
18 representatives of the bondholders on a pre-petition basis, we
19 indicated we would fund reasonable expenses associated with the
20 wind-down of OldCo.

21 Q. Thank you, sir. Mr. Wilson, do I understand correctly,
22 that you were one of the principal negotiators of the summary
23 term sheet that provided the basis for the master purchase and
24 the sale agreement?

25 A. Which summary term sheet, sir?

1 Q. Were you one of the principal negotiators on behalf of the
2 treasury of the transaction that is being presented to the
3 Court for approval today?

4 A. Yes.

5 Q. And as part of those -- as part of this transaction did
6 you have the occasion to negotiate with representatives of the
7 ad hoc bondholders committee prior to the commencement of the
8 case?

9 A. Yes.

10 Q. And who were the individuals that you principally
11 negotiated with on behalf of the ad hoc bondholders?

12 A. The lead members were Mr. Eric Siegert from Houlihan Lokey
13 and Mr. Andrew Rosenberg from Paul Weiss.

14 Q. And approximately when did those negotiations take place?

15 A. Well, they had approached the Treasury Department earlier
16 in the case. We indicated to them that we needed to work
17 through the operating restructuring plan with the company in
18 order to determine what obligations the company could bear on a
19 restructured or in the ultimate resolution of the case on a
20 NewCo basis and then engaged with them in earnest in late May.

21 Q. And am I correct that as a result of those negotiations an
22 understanding was reached that provided for ten percent of the
23 NewCo equity to be left in the OldCo estate for the benefit of
24 unsecured creditors?

25 A. That was a portion of consideration, yes.

1 Q. And in addition to the ten percent of the equity, there
2 were also warrants, is that correct?

3 A. Yes.

4 Q. And was there also a provision, Mr. Wilson, that provided
5 for the possibility of additional direct equity to be provided
6 to the OldCo estate?

7 A. Yes. In the event that claims exceeded thirty-five
8 billion dollars, which we considered unlikely at the time, that
9 there would be a sliding scale from thirty-five to forty-two
10 billion dollars, where up to two percent of additional equity
11 would be awarded to -- two percent of the equity of NewCo would
12 go to the creditors of OldCo.

13 Q. So that was, essentially, an equity cushion in the even
14 claims exceeded what was expected to be the likely amount of
15 allowed general unsecured claims, is that correct?

16 A. Yes.

17 Q. And at the time that you conducted these negotiations, did
18 you have an understanding as to the amount of general unsecured
19 claims other than the bondholder claims that you thought would
20 be allowed against OldCo in this case?

21 A. No, we did not. We were focused at that point as NewCo as
22 the purchaser of certain assets and the assumption of certain
23 liabilities. And had not really worked through what the
24 unsecured claims against OldCo could be.

25 Q. Am I correct that you understood that the bondholder

1 claims were approximately twenty-seven to twenty-eight billion
2 dollars, is that correct?

3 A. Yes.

4 Q. And the level at which the two percent equity cushion
5 kicked in you said was thirty-five billion dollars, is that
6 correct?

7 A. That's when it started to kick in, yes.

8 Q. So if I understood your testimony that you didn't think
9 the thirty-five billion dollars was going to be exceeded, is it
10 fair to assume that you didn't think the other unsecured claims
11 against OldCo was going to exceed eight billion dollars?

12 A. I think seven to eight, between the bonds being twenty-
13 seven to twenty-eight.

14 Q. Did you have any general sense of what you think the
15 number was likely to be?

16 A. We thought it would be less than that.

17 Q. Do you have any recollection as to whether that number was
18 intended to be approximately three to four billion dollars?

19 A. I don't recall that specific point in time, I know we had
20 some discussions around it. But it was certainly expected to
21 be less than the seven billion, but I can't recall exactly what
22 we thought at that point in time.

23 Q. And did you have any sense as to what categories of claims
24 made up the claims other than the bondholder claims that were
25 going to be allowed claims against OldCo?

1 A. Sure. Much of the claims have been the subject of today's
2 discussions. It was the claims from the so-called splinter
3 unions, the asbestos claimants, the product liability claims
4 we've discussed, and any other unsecured claim that may come
5 forth.

6 Q. And at that point in time you had also taken into account
7 workers' compensation claims?

8 A. I believe so, that was part of the company's balance
9 sheet.

10 Q. Mr. Wilson, in connection with this transaction, my
11 understanding is that the U.S. Treasury is intending to receive
12 approximately 72.5 percent of the NewCo equity, is that
13 correct?

14 A. No, it's not correct.

15 Q. What is the percentage of equity that the U.S. Treasury
16 expects to receive?

17 A. It will be approximately 60.8 percent.

18 Q. 60.8 percent, thank you. And the U.S. Treasury is
19 receiving this equity in connection with a credit bid, in
20 connection with its outstanding indebtedness, is that correct?

21 A. As well as additional funding, yes.

22 Q. And am I correct that the credit bid is in respect of,
23 both pre-petition debt and debtor-in-possession financing?

24 A. Yes.

25 Q. And there's also going to be some additional financing

1 over and above the pre-petition plus the debtor-in-possession
2 financing?

3 A. Well, I think it depends on the point in time. The
4 debtor-in-possession financing as contemplated under the DIP
5 order, plus the pre-petition financing I believe is the
6 subtotal of our credit bid.

7 Q. And am I correct that the pre-petition financing that is
8 the subject of the credit bid is approximately 21.4 billion
9 dollars?

10 A. I believe the pre-petition financing is 19.4 billion
11 dollars.

12 Q. 19.4 billion dollars. And what do you expect would be the
13 amount of the --

14 MR. ECKSTEIN: Well, let me withdraw that.

15 Q. What is the amount of the debtor-in-possession financing
16 that's outstanding as of today?

17 A. As of today, the -- well, I'm sorry. AS of the last I
18 knew, which is roughly yesterday or today, was approximately
19 ten to eleven billion dollars.

20 Q. And have you made any estimates as to the amount of
21 debtor-in-possession financing that you expect to be
22 outstanding at the time of the closing?

23 A. Yes. It is our understanding and expectation that the
24 entire DIP budget will be used.

25 Q. And that will be how much, sir?

1 A. 33.3 billion dollars.

2 Q. Thank you. And has U.S. Treasury made any allocation of
3 the NewCo equity that it expects to receive as between the pre-
4 petition debt and the debtor-in-possession financing?

5 A. No.

6 Q. Does it expect to do so prior to the closing, sir?

7 A. We don't see any reason why we would.

8 Q. Thank you very much, sir, I have no further questions.

9 MR. HOFFMAN: Good morning, Your Honor. John Hoffman
10 on behalf of the IUE and the other objecting unions.

11 CROSS-EXAMINATION

12 BY MR. HOFFMAN:

13 Q. Good morning, Mr. Wilson.

14 A. Good morning.

15 Q. I think I'll be very brief. Do you recall when I took
16 your deposition this Monday?

17 A. Yes, sir.

18 Q. And do you recall this morning when you told Mr. Salzberg
19 that you did not recall whether or not you had seen Exhibit
20 2 -- Bondholder Exhibit 2 prior to that deposition?

21 A. Yes.

22 Q. Do you have Bondholder Exhibit 2 up there, at this point,
23 Mr. Wilson?

24 A. Is this it?

25 Q. Yes, sir.

1 A. Yes, I have it.

2 Q. And do you have your deposition transcript up there, at
3 this point?

4 A. Yes.

5 Q. And do you recall at that deposition when I asked you
6 these two questions?

7 MR. MILLER: Can you give a page, please?

8 MR. HOFFMAN: Yes, at page 22, line 20, through 23,
9 line 6.

10 Q. And what we had in front of you I believe at that point
11 was Exhibit 3 to your deposition, which is now Bondholder
12 Exhibit 2. Do you recall when I asked you these questions and
13 you gave these answers?

14 "Q. And did you attend the meeting at which Cadwalader had
15 presented this? I think it's actually a deck of slides?

16 "A. Actually, I don't recall meeting. I don't know if I did
17 or not.

18 "Q. So you don't know whether you attended the meeting at
19 which this was presented, but you saw it in some respect during
20 your work at the task force?

21 "A. That's correct."

22 And did you give those answers to me on Monday?

23 A. That's correct and that's a helpful reminder.

24 Q. Pardon?

25 A. I said that's correct and it's a helpful reminder.

1 Q. Pleased to be of service, Mr. Wilson. And I'm going to
2 ask you to turn to page 12 of Bondholder Exhibit 2. And let me
3 just set a predicate here. Before you joined the task force in
4 March of this year, you did have some experience with Section
5 363 of the Bankruptcy Code, is that correct?

6 A. Yes.

7 Q. And it was your understanding that one of the
8 considerations that made a Section 363(b) sale attractive was
9 the ability of the purchase to cherry pick the liabilities it
10 assumed?

11 A. Yes.

12 Q. And that was one of the considerations that you used and
13 the Task Force used in deciding on the form of this sale, is
14 that correct?

15 A. Yes.

16 Q. And in deciding what liabilities New GM was going to
17 assume your task was solely that the assets assumed should be
18 commercially necessary for the viability or help for the New
19 GM, is that correct?

20 A. That was the focus of our assessments, yes.

21 Q. That was the test you used?

22 A. The primary test, yes.

23 Q. And you didn't give any consideration to Section 1114 of
24 the Bankruptcy Act or the priorities of those liabilities under
25 the Bankruptcy Code, is that correct?

1 A. Well, to the extent that Section 1114 was relevant, we
2 consider that a consideration for the creditors of OldCo.

3 Q. And you didn't consider it in terms of what assets you
4 were going to purchase in NewCo?

5 A. Well, we did not believe that any of the assets we were
6 purchasing required any of the liabilities associated that
7 would fall under the question you're asking.

8 Q. In deciding what liabilities NewCo was going to assume you
9 did not consider any of the effects of Section 1114 of the
10 Bankruptcy Code, is that correct?

11 A. I think that's fair to say.

12 Q. I'm sorry; what was that?

13 A. I think that's fair to say.

14 Q. Okay. Could you turn, in the large book of exhibits, to
15 your deposition and following that Exhibit 12, and these are in
16 evidence at this point. Exhibit 12 to your deposition. If you
17 need help, I can come up and, I think, help you.

18 A. Is this it?

19 Q. No.

20 MR. HOFFMAN: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 (Pause)

23 Q. And I really want to refer you to the third to the last
24 page of this exhibit, Mr. Wilson. It has the heading salaried
25 and splinter union benefit obligations guideline objectives.

1 MR. HOFFMAN: May I approach?

2 THE COURT: Yes.

3 (Pause)

4 MR. HOFFMAN: Exhibit 12, the third to the last page.

5 Q. And did there come a time when the task force set, for GM
6 management, a target of two-thirds reduction in certain retiree
7 benefits?

8 A. Yes.

9 Q. And did GM come back and --

10 THE COURT: Are people in the back of the room able
11 to hear me and Mr. Hoffman? All right. ECRO -- do we have
12 electronic record? So we don't know if it's going to any of
13 the other room and we need to make sure. I think we have no
14 choice but to take a recess and see if we can resolve this.
15 Let's go to a recess. We'll try to be back within five minutes
16 after it gets fixed but I don't know how long it will take to
17 have it fixed.

18 (Recess from 11:55 a.m. until 11:59 a.m.)

19 THE COURT: I'll give folks a chance to be seated and
20 then we can continue.

21 (Pause)

22 MR. HOFFMAN: May I proceed, Your Honor?

23 THE COURT: Yes, sir.

24 MR. HOFFMAN: Thank you.

25 Q. Focusing, again, on the third to the last page of Exhibit

1 12, Mr. Wilson, does this reflect the proposal that GM
2 management made to the task force concerning its request for a
3 two-thirds reduction in the 7.9 billion dollars in retiree
4 benefits?

5 A. Yes, this was the first response from the General Motors
6 management team.

7 Q. Right. And in it they had reflected a reduction in the
8 retiree basic life insurance and the 10,000 dollars flat, is
9 that correct?

10 A. Yes.

11 Q. And they had not further cut salaried retiree healthcare
12 recognizing that it had been cut at the beginning of the year,
13 is that correct?

14 A. Yes.

15 Q. They cut executive non-qualified pensions by thirty-two
16 percent, is that correct?

17 A. Yes.

18 Q. And that's what we call a SERP, right?

19 A. Yes, I believe that line item is the SERP.

20 Q. And what they did was for retired executives earning less
21 than one hundred thousand dollars on their retirement SERP
22 benefit, they got a ten percent reduction -- excuse me, a
23 combined retiree pension and SERP benefit of less than one
24 hundred thousand dollars, they got a ten percent reduction.

25 A. Yes. But just to clarify one thing I said earlier, I

1 think, as it says here, there's -- this is part SERP and part
2 just ERP. So I think there are elements of this program that
3 are not just the SERP.

4 Q. Okay. So let's take it as a benefit as a whole.

5 A. Yes.

6 Q. They got a ten percent reduction if they had under a
7 hundred thousand dollars total retirement payments, right?

8 A. Yes.

9 Q. Per year. And if they had a two-thirds reduction of any
10 amount over a hundred thousand dollars, is that correct?

11 A. Yes.

12 Q. And the executives lost their life insurance but they
13 still had the retiree basic life insurance, is that correct?

14 A. I believe so. Yes.

15 Q. And the splinter unions, as they're called, they were
16 proposing we're going to lose eighty-four percent of the value
17 of their health insurance, correct?

18 A. That was the end result of a policy to provide the same
19 level of benefits for the splinter union retirees as for the
20 salaried retirees. The math of that became eighty-four percent

21 Q. And -- excuse me, I didn't mean to interrupt but to you
22 and the task force, symmetry between the retiree healthcare
23 benefits and the splinter union healthcare benefits was an
24 important factor, wasn't it?

25 A. Well, we struggled with this issue for some time, Mr.

1 Hoffman. And the -- one of the things we wrestled with was no
2 assumption of retiree benefits. And we felt that that was, at
3 least initially, a reasonable position as a buyer of the assets
4 for New GM. And the response we received from the management
5 team was that that would have a significant deleterious effect
6 on the moral of management, most of whom are coming over to
7 NewCo as we've discussed, and we should modify that. And in
8 the course of -- as a result of many, many discussions around
9 this topic concluded that we settled on the two-thirds
10 reduction overall and felt that we really left it to the
11 management team to decide how to do that. And this was, of
12 course their, as I discussed earlier, their first proposal on
13 that.

14 Q. Thank you. And the task force's response to this proposal
15 was what?

16 A. We said two-thirds and we meant two-thirds.

17 Q. Yeah. So come back again and tell us how you're going to
18 do the two-thirds, in words or substance, correct?

19 A. I missed the second half of what you said, sir.

20 Q. So GM management, come back again and tell us how you're
21 going to achieve two-thirds, in words or substance that's what
22 you told them, right?

23 A. Yes.

24 Q. Yeah. Could you turn to Exhibit 13, the second page,
25 please?

1 (Pause)

2 Q. And do you believe the second page reflects where GM
3 management came back and told you how they were going to reach
4 the two-thirds?

5 A. Yes, absent the black lining, but yes.

6 Q. And what they did was move the cost share on retiree
7 health to forty-five percent cost share, and that resulted in
8 salaried healthcare losing twenty-five percent of their benefit
9 and the unions losing eighty-seven percent of their benefit, is
10 that correct?

11 A. Yes, sir.

12 MR. HOFFMAN: Other than that, Your Honor, we'll rely
13 on the deposition of Mr. Wilson.

14 THE COURT: Okay.

15 MR. HOFFMAN: Thank you, Mr. Wilson.

16 THE WITNESS: You're welcome. Thank you.

17 THE COURT: Anyone else? Ms. Cordry?

18 MS. CORDRY: Thank you, Your Honor. Karen Cordry on
19 behalf of the Attorneys General. I'd like to ask the witness
20 some questions about the proposed sale order that's part of the
21 sales motion. It's obviously something the Court can take
22 judicial notice of. I can put it in as an exhibit separately
23 if you'd prefer.

24 THE COURT: It might be easier, Ms. Cordry, if you'd
25 consider it an exhibit as well.

1 MS. CORDRY: Attorneys General Exhibit 1, I guess.
2 (Attorney General's 1, proposed sale order, was hereby marked
3 for identification as of this date.)

4 MS. CORDRY: And I have a copy for the witness if I
5 may approach.

6 THE COURT: Yes. Thank you. Do you have an extra
7 for me?

8 THE WITNESS: Thank you.

9 CROSS-EXAMINATION

10 BY MS. CORDRY:

11 Q. Okay. First, have you seen what's been labeled Attorney
12 General's Exhibit 1 that I've handed to you?

13 A. I have skimmed this before, yes.

14 Q. Okay. Have you -- you said you skimmed, does that mean
15 you have read it all the way through?

16 A. I skimmed it all the way through.

17 Q. Okay. Who on Treasury's side is responsible, in depth,
18 for the actual terms of that order, the specific language going
19 into that order?

20 A. Well, the general business principles I would be primarily
21 responsible for. But the actual language would be my
22 colleague, Matthew Feldman.

23 Q. Okay.

24 A. Who's an attorney.

25 Q. But as the business principals you would be familiar with

1 the terms that are in here and what -- to the extent the order
2 encompasses the decision by Treasury to assume liabilities, to
3 refuse to assume liabilities, those kind of trade offs you're
4 familiar with that, is that correct?

5 A. Certainly the high level.

6 Q. Okay. To your knowledge, is this order still the only one
7 that's been filed with the court?

8 A. To the best of my knowledge, yes.

9 Q. There are ongoing discussions, are there not, with respect
10 to the terms of this order, various negotiations with various
11 objecting parties to your knowledge?

12 A. There had been, I don't know that they're continuing.

13 Q. Do you know -- have you been party to any of those
14 discussions?

15 A. Not on a day-to-day basis, no.

16 Q. Okay. To your knowledge, have all those discussions been
17 resolved and placed into an order?

18 A. To the best of my knowledge we have heard all the issues
19 that are outstanding. We've formulated a view on what we're
20 willing to do and I think we've resolved that view.

21 What's been communicated to the various parties or what's
22 been set forth in the documents, I'm not familiar with.

23 Q. Okay. And who is communicating those views to -- is your
24 position being communicated to the debtors, to the other
25 parties, how is that communication being made?

1 A. I'm not certain. I believe that there's been direct
2 dialogue between at least our outside counsel at Cadwalader
3 with the various parties. But since I'm not part of those
4 conversations I'm not exactly sure who's in those
5 conversations.

6 Q. Okay. Could you look at paragraph 27 in that order; it's
7 on page 23.

8 (Pause)

9 Q. The second sentence there -- it says, "The purchaser shall
10 not be deemed as a result of any action taken in connection
11 with the MPA or any of the transactions or documents ancillary
12 thereto or contemplated thereby or in connection with the
13 acquisition to purchase assets to (i) be it legal successor or
14 otherwise be deemed a successor to the debtors other than with
15 respect to any obligations arising under the purchase
16 agreements from and after the closing; (ii) have de facto or
17 otherwise merged with or into the debtors; or (iii) be a mere
18 continuation or substantial continuation of the debtors or the
19 enterprise of the debtors." That's a correct reading of what's
20 there?

21 A. Yes.

22 Q. Okay. With that statement there, do you know if a legal
23 analysis was made as to whether under the facts of these
24 transactions the debtor is in fact the new debtor, the New GM,
25 the purchaser and this new enterprise would be considered to be

1 **a successor of Old GM?**

2 MR. SCHWARTZ: To be clear, the question is whether
3 an analysis was performed?

4 MS. CORDRY: Yes, that's the question.

5 THE COURT: That's exactly the way to do it without
6 blowing a privilege.

7 MS. CORDRY: Right.

8 THE COURT: And with the clarification, especially, I
9 think it's clear that the question can and should be answered.

10 MR. SCHWARTZ: Could we make clear that it's a yes or
11 no question?

12 MS. CORDRY: Well that question, I think, probably is
13 a yes or no question, yes.

14 THE COURT: I think it is a yes or no question.

15 **A. Could you please repeat it?**

16 **Q. Okay. Do you know whether any legal analysis was made as**
17 **to whether under the actual facts of this transaction would the**
18 **purchaser, the new GM enterprise, be a successor to Old GM?**

19 **A. I believe so.**

20 **Q. And who would have made that analysis?**

21 **A. I believe it would have been Mr. Feldman in conjunction**
22 **with outside counsel.**

23 **Q. And do you know whether they analyzed that under federal**
24 **law or state law?**

25 **A. I don't know.**

1 Q. And did they come to a conclusion on that?

2 THE COURT: Answer yes or no.

3 A. Yes.

4 Q. Okay. And I'll ask this --

5 MS. CORDRY: You can object if you want.

6 Q. -- was the conclusion that under all circumstances and for
7 all types of claims that they were not a legal successor?

8 MR. SCHWARTZ: Objection.

9 THE COURT: Sustained. That question can't be
10 answered without getting into substance.

11 MS. CORDRY: Okay.

12 Q. The order also states that --

13 MR. SCHWARTZ: With respect, I'm going to object to
14 the relevance of the entire line of questioning. I understand
15 that the attorneys general have a legal objection that is set
16 forth in their objections about some of the terms of the sale
17 order. I also understand that there is a work through of many
18 of the issues that objectors have raised and that the document
19 is in flux. I'm not sure that it makes sense to question this
20 witness about that document. It's a legal issue.

21 THE COURT: Mr. Schwartz, I'll be the judge of that.

22 MR. SCHWARTZ: Of course.

23 THE COURT: Ultimately, the decision is a legal one
24 for the Court. Within the bounds of reason, I'm going to let
25 the parties develop factual records. I have no doubt that I'm

1 going to hear in summation argument on the legal issues, and
2 frankly I'll tell you, Ms. Cordry, what kind of homework people
3 do before that is relevant to my legal decision but I'm going
4 to cut you a little slack in this regard, as long as you don't
5 abuse it.

6 MS. CORDRY: Right. Because I think the question I'm
7 asking, although I'd be happy to know what their answer was,
8 the question I'm asking is in this order it appears to say, and
9 I think your various testimony appears to be that the purchaser
10 will not proceed unless it's really a successorship liability
11 in a broad sense. And I'm trying to parse through that a
12 little bit and try to find out what the intentions actually
13 are, depending on the legal analysis of the Court and whether
14 that analysis will have any affect on what the government is
15 prepared to do.

16 THE COURT: Well, we can limit some but I'll let you
17 question.

18 MS. CORDRY: Thank you.

19 Q. So my question is, going to that point that the order is
20 asking for a determination that under all circumstances this
21 purchaser is not a successor of the old debtor, if the Court
22 finds to the contrary, so I'm not asking you to make a legal
23 determination -- if the Court finds to the contrary as to one
24 or more aspects of the claims that in fact this purchaser would
25 be a legal successor, is the purchaser -- is Treasury prepared

1 to walk away at that point.

2 A. It is, of course, hard to answer a hypothetical without
3 knowing the terms of that -- of the outcome of that. But
4 certainly our strong view is that we are not going to be seen
5 as successor and cannot take on successor liability.

6 Q. Okay. And that's what I'd like you to distinguish now,
7 the difference between being seen as a successor and then the
8 second aspect as successor liability which is, this order is
9 also asking the Court to determine that the sale can be made
10 free and clear of successor liability. Is that your
11 understanding?

12 A. Yes.

13 Q. So that even if you were a successor it is asking that the
14 sale be made, that the Court find that legally the sale can be
15 made without regard to any liabilities that you might have, is
16 that your understanding?

17 A. Yes.

18 Q. Okay. With that distinction between those two aspects of
19 successor liability, if the Court found the latter, that it
20 could be sold free and clear of successor liability, but either
21 found that you were a successor perhaps more properly said I
22 don't need to find if you are a successor or not because I'm
23 allowing you to sell free and clear that liability, is Treasury
24 prepared to walk away if they don't get that legal finding that
25 you are not a successor?

1 A. I'm not sure my legal knowledge, is extent to one
2 constitutional law class would give me enough basis to kind of
3 assess exactly what your question is. But I can tell you that
4 the sale motion was put together very deliberately and it was
5 certainly based on the predicate that we will not have any
6 successor liability and that the sale motion would find that we
7 were not a successor.

8 Q. I understand. But I am asking you and I think the Court
9 needs an answer before we go to this and I don't know whether
10 you're prepared to give the answer at this point or not. But
11 if the Court found that you were not going to be held liable
12 for successor claims but found that you were still a successor,
13 because those are two very different issues and have two very
14 different consequences, I'm asking you as a business judgment
15 whether the Treasury has even considered the distinction
16 between those two aspects of successor liability?

17 MR. SCHWARTZ: Objection. Mr. Wilson has already
18 answered that if the sale order is not entered by July 10th it
19 is Treasury's intention not to fund. What Ms. Cordry is really
20 trying to do is negotiate the language of the sale order with
21 Mr. Wilson on the stand.

22 THE COURT: I don't think so, Mr. Schwartz. Ms.
23 Cordry, I'm not going to let you question as to their
24 deliberations but if Treasury or the task force now has formed
25 a view on what it will do if I rule adversely on any element of

1 successor liability, you've got to tell me.

2 THE WITNESS: We do not have any intention to move
3 forward if the sale order, with regards to successor liability,
4 is not entered as described in here.

5 Q. Okay. Now, on the other hand you are continually drafting
6 the order so in fact you are prepared to make some changes in
7 this order and I believe that some of those go to successor
8 liability.

9 A. Well, I think that's where we started the conversation.
10 And what I indicated was we're taking all kinds of perspectives
11 and views and input, all which we had received prior to June 1
12 because it was clear what was happening in General Motors and
13 there are no surprises. But even despite that, we still were,
14 we believe, extraordinarily accommodating in taking all sorts
15 of input from all sorts of people post June 1. And at this
16 point in time we've taken all the input we intend to take and
17 have formulated our final views on that.

18 Q. Okay. But that really was not my question. My question
19 was, in fact, the draft orders that are going around have
20 changes in provisions that relate to successor liability, do
21 they not?

22 A. Yes.

23 Q. Okay. So this order is not the one you're going to
24 necessarily ask the Court to enter, correct?

25 A. That is correct.

1 Q. Thank you. And again, just to be absolutely clear, your
2 position now is that you want the Court to say that even if the
3 Court finds that legally you would be a successor but that the
4 Court would relieve you of free and clear -- would allow you to
5 sell free and clear of that liability, that your position would
6 be you would walk away from that unless the Court allows you to
7 sell -- I'm sorry. You would walk away unless the Court finds
8 that you are not a successor regardless of what the law might
9 say?

10 A. That's our position.

11 Q. Okay. So the order would have to find you're not a
12 successor regardless of what the Court finds the law to be in
13 order for the sale to go forward.

14 A. Ma'am, I think honestly you're stretching well beyond the
15 boundaries of my legal knowledge. I explained to you the
16 business principles underlying our position.

17 Q. That is the business principles I'm asking you for --

18 THE COURT: Time out, Ms. Cordry. If you don't like
19 his answer you can move to strike but you can't interrupt him
20 in the middle.

21 MS. CORDRY: I'm sorry. I'm sorry, Your Honor.

22 Q. And I'm sorry, Witness. Please complete your answer.

23 A. No problem. And as I testified at the very beginning, I'm
24 more than happy to answer any questions on the business
25 principles outlined herein and that's been the basis of my

1 answers throughout my testimony. But to the extent you're
2 asking for legal distinctions that are beyond my knowledge, I
3 can't answer it thoughtfully or accurately.

4 Q. I think I was looking at the business judgment that that
5 was where they would take the order but let me move on to one
6 other set of questions.

7 In terms of, you said, this order was very carefully
8 drafted, I believe you said, correct?

9 A. I don't recall if I said that or not but I certainly hope
10 it was.

11 Q. Okay. One of the things that has come up here, certainly
12 in our discussion and I think with other peoples and so forth,
13 is the question of just how broadly this free and clear sale
14 might extend and so forth and what might be covered by this.
15 Someone made copies of this but apparently, I'm sorry, they
16 only made copies of -- it was a double-sided page and it was
17 only made with single-sided pages.

18 MS. CORDRY: Could I possibly borrow back your
19 originally order and we'll substitute corrected one.

20 THE COURT: You're talking about the proposed order?

21 MS. CORDRY: Yes.

22 THE COURT: Yes, you can borrow it.

23 MS. CORDRY: I'm sorry.

24 (Pause)

25 Q. If you look at paragraph T there, which talks about

1 selling free and clears of liens and claims and encumbrances
2 and so forth, can you just briefly read down that paragraph and
3 then I'll ask you a question about it.

4 THE COURT: Ms. Cordry, pause please.

5 MS. CORDRY: Yes.

6 THE COURT: I'll see if I have another copy.

7 (Pause)

8 THE COURT: Mr. Miller, can one of your folks provide
9 me with one? You may approach.

10 MR. MILLER: Just give us a moment, Your Honor.

11 THE COURT: Sure.

12 (Pause)

13 THE COURT: You want to make a reference to T, if I
14 recall?

15 MS. CORDRY: T, right. It would be page 8.

16 (Pause)

17 Q. Have you had a chance to finish reading that?

18 A. Yes.

19 Q. Okay. If you go through that paragraph, if you'll notice
20 at the top it refers to claims with a small (c). If you look
21 halfway down it refers to claims, with a small (c) (as defined
22 in the Bankruptcy Code). And I believe towards the ends it
23 talks about large (C) claims in the next to last line.

24 A. I see the -- I see the large (C) claims in the second to
25 last line, I don't see your other two references.

1 Q. Okay. It would be seven lines from the bottom is the
2 claims (as that term is defined in the Bankruptcy Code), do you
3 see that?

4 A. Yes.

5 Q. And I believe up at the beginning of it, when it starts
6 talking about what's being sold free and clear of liens,
7 claims, encumbrances and so forth, do you see that?

8 A. Yes.

9 Q. Okay. Without the parenthetical?

10 A. Yes.

11 Q. Is it your understanding that those three terms are meant
12 to be something different in the same paragraph?

13 MR. SCHWARTZ: Objection. Mr. Wilson testified he
14 had only skimmed the document and he wasn't a draftsman of the
15 document.

16 THE COURT: All right. I'm going to sustain that but
17 you are entitled to question, Ms. Cordry, as to whether he, as
18 a businessman or as a government official, has a businessman's
19 understanding as to whether he was intending to make any
20 distinctions between the two.

21 Q. As the judge stated, as a businessman is it your
22 understanding that this document was intending, in that
23 paragraph, to make a distinction between those three sets of
24 uses of the term claim?

25 A. I haven't spent any time on the details of the document.

1 I know there was some discussion yesterday around the
2 distinction between lower case C and upper case C, but I didn't
3 spend any time on that issue.

4 Q. And are you aware of what the defined definition of -- the
5 upper case C defined definition of a claim is, according to the
6 master purchase and sale agreement?

7 A. Not off the top of my head, no.

8 Q. Are you aware that it goes beyond a bankruptcy claim that
9 includes things like defenses and investigations and right to
10 recoupment?

11 A. I'm not aware of that.

12 Q. Okay. But if I state to you that that's what it says,
13 would you doubt that your purchase and sale agreement goes
14 beyond a simple bankruptcy claim?

15 MR. SCHWARTZ: Objection. Calls for a legal
16 conclusion.

17 THE COURT: Sustained.

18 Q. I'm simply asking, do you disagree with me that the master
19 purchase and sale agreement says that if I make a
20 representation to you that it says that, do you disagree with
21 that?

22 MR. SCHWARTZ: Objection. The document speaks for
23 itself.

24 THE COURT: Well, Mr. Schwartz, documents often
25 speaks for themselves but when a document is drafted in this

1 fashion that's debatable.

2 MR. SCHWARTZ: At least the document should be in
3 front of the witness.

4 THE COURT: No. Forgive me, Mr. Schwartz. I'm not
5 going to get into a debate with you. That objection is
6 overruled. I'm going to reiterate, Ms. Cordry --

7 MS. CORDRY: Yes.

8 THE COURT: -- that you're free to ask him his
9 understanding, as a non-lawyer, what he's trying to accomplish.

10 MS. CORDRY: Yes, Your Honor.

11 THE COURT: I am not going to have him construe this
12 document.

13 MS. CORDRY: No, Your Honor.

14 THE COURT: It may be tough enough for me to construe
15 the document.

16 MS. CORDRY: Yes, sir.

17 THE COURT: And even if he had read it more
18 extensively, which the record indicates he hasn't done, the
19 question would, in my view, be inappropriate.

20 MS. CORDRY: Okay.

21 THE COURT: So while I don't go as far as Mr.
22 Schwartz' objections or to sustain them, the ground rules for
23 this examination are that you're allowed to find out his
24 businessman's understanding and to the extent he has intentions
25 what they are.

1 MS. CORDRY: Yes, sir.

2 THE COURT: Go ahead.

3 MS. CORDRY: Okay.

4 Q. For purposes of this question, I'll simply make the
5 representation that as a factual matter the defined term claim
6 says it includes small C claims and those other matters that I
7 mentioned, things like defenses, right to recoupment,
8 investigations. So for the moment I'm simply saying that's
9 what the words say, are you prepared to accept that as my
10 representation that that's in fact what your document says?

11 A. I don't have any reason to doubt your integrity, no.

12 Q. Okay. Thank you. Are you aware if there's been any
13 analysis of whether any rights under the Bankruptcy Code to
14 sell free and clear of bankruptcy claims extends beyond that to
15 the extent of the matters covered by your defined term claim?

16 A. I haven't spent any time on that issue.

17 Q. I'm not asking you that. I'm asking you has there been
18 any legal analysis done as to whether there's a distinction in
19 terms of the ability to sell free and clear between the
20 bankruptcy term claim and your defined term claim?

21 A. Not that I'm aware of.

22 Q. Okay. Has there been any determination, then, as to
23 whether if the Court limited the sale free and clear of claims
24 to the bankruptcy definition claim, rather than your defined
25 term claim, whether the Treasury would pull out of this

1 agreement?

2 A. Since we haven't discussed it I can't -- of course we
3 don't have a position on it because we haven't discussed it.

4 Q. If -- all right. So if the Court found that it was
5 illegal to go beyond a bankruptcy claim and could not extend
6 the free and clear to your defined term claim, you at this
7 point have no position as to whether or not the Treasury would
8 need to terminate the sale or not, is that what I hear you
9 saying?

10 A. Yes.

11 Q. Okay. Conversely, the purchaser has not yet taken the
12 position -- has not determined that it will only complete the
13 sale if the Court finds that it can -- if the Court includes a
14 provision in the order that says regardless of what the law is
15 you can have your defined term claim as what can be sold free
16 and clear?

17 A. For the same reasons, that we haven't discussed this
18 issue, yes.

19 Q. Okay. Thank you.

20 MS. CORDRY: That's all, Your Honor

21 THE COURT: Okay. Mr. Bernstein?

22 CROSS-EXAMINATION

23 BY MR. BERNSTEIN:

24 Q. Good afternoon, Mr. Wilson. My name is Norman Bernstein.
25 Just a few quick questions. During the run up to the

1 bankruptcy, after December and before May 30th, were there any
2 conversations that you're aware of regarding GM's bidding for
3 this then ongoing environmental obligations?

4 A. Could you repeat the question?

5 Q. Sure. During the period, December through May 30,
6 December 19, 2008 through May 30th of 2009, were there any
7 conversations, that you are aware of, regarding GM's continuing
8 to pay for its ongoing environmental obligations?

9 A. I guess the reason I asked you to repeat the question is I
10 wanted to make sure I understood it. Are you talking about GM
11 in the context of that period of time?

12 Q. Yes.

13 A. And its obligation during that period of time?

14 Q. Yes.

15 A. We assume that they're doing what they should be doing
16 under law.

17 Q. What would be the basis for that assumption?

18 A. Perhaps it was ill founded but certainly our expectation
19 was that in all aspects of the business they were complying
20 with the law.

21 Q. Apart from expectations, if those expectations turned out
22 to be incorrect, was there any conversation that you know of
23 relating to that subject?

24 A. Not that I'm aware of.

25 Q. If this Court were to conclude that a, what I'll call de

1 minimis exception to the successor liability in the amount of
2 62,700 dollars was appropriate because of conduct by general
3 motors in or about May of 2009, would that prevent, the 62,700
4 change, prevent the Treasury from going forward?

5 A. I'd have to, obviously, review the facts and circumstances
6 of this year to ultimately opine. But it's hard to see, even
7 though as I've said many times that we've only what is
8 absolutely commercially necessary and it's hard to draw a fine
9 line on viability. It is hard to say that the 62,000 dollars
10 would swing the difference.

11 MR. BERNSTEIN: Thank you very much, Your Honor.

12 THE COURT: Before you leave, Mr. Bernstein.

13 MR. BERNSTEIN: Yes.

14 THE COURT: When we eventually get to summations, I
15 want both sides to address a question that I'm likely to ask at
16 the beginning of argument which is that when you have a consent
17 decree that requires the payment of money, is that regarded as
18 an obligation of law on the one hand or an ordinary contractual
19 obligation on the other?

20 MR. BERNSTEIN: I believe --

21 THE COURT: I don't want you to answer it now.

22 MR. BERNSTEIN: Yes.

23 THE COURT: I want both parties to address that when
24 it's time.

25 MR. BERNSTEIN: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. BERNSTEIN: And also, Your Honor, I have attached
3 to my affirmation about four documents, Judge Nolan's order,
4 the consent decree, the trust agreement and the assessment.
5 Could those be deemed marked in evidence?

6 THE COURT: Well, certainly marked. I assume that
7 you mean is admitted into evidence. Any objection?

8 MR. MILLER: No, Your Honor.

9 THE COURT: No objection; they're all admitted.
10 (Judge Nolan's order was hereby received into evidence as of
11 this date.)
12 (Consent decree was hereby received into evidence as of this
13 date.)
14 (Trust agreement was hereby received into evidence as of this
15 date.)
16 (Assessment was hereby received into evidence as of this date.)

17 MR. BERNSTEIN: Thank you, Your Honor.

18 THE COURT: Okay. Ms. Cordry?

19 MS. CORDRY: Could Attorney General's Exhibit 1 also
20 be admitted into evidence? I'm sorry. I forgot to ask
21 earlier.

22 THE COURT: Any objection?

23 MR. MILLER: No objection.

24 THE COURT: All right. It's admitted for what I
25 understood it to be, which was to be a proposed order that was

1 tendered at the time. Okay.

2 (Attorney General Exhibit 1, proposed sale order, was hereby
3 received into evidence as of this date.)

4 THE COURT: All right. Who else? Anyone? Mr.
5 Parker?

6 CROSS-EXAMINATION

7 BY MR. PARKER:

8 Q. Good morning, Mr. Wilson. I'm Oliver Parker.

9 A. Good afternoon.

10 Q. Give me one second.

11 (Pause)

12 Q. I know you weren't with the government in December of 2008
13 when the LSA was executed, the loan and security agreement
14 between general motors and the U.S. Treasury. But as part of
15 your job with the Treasury since March of 2008 have you had
16 cause to review the LSA?

17 A. Yes.

18 Q. Okay. The loan that the U.S. Treasury gave to General
19 Motors, was that loan for the purpose of purchasing new
20 property?

21 A. No.

22 Q. Okay. The property that was liened under the terms of
23 that loan or mortgaged under the terms of that loan, was that
24 property that was already owned by General Motors?

25 MR. MILLER: Your Honor, objection. This testimony -

1 - the answers to these questions are already in the record. We
2 can stipulate to them and save a lot of time.

3 THE COURT: All right. You may offer a stipulation,
4 Mr. Miller.

5 MR. MILLER: I would stipulate, Your Honor, that the
6 funds were not used for the purpose of buying property to
7 attach liens. What was the next one?

8 MR. PARKER: The liens --

9 THE COURT: Come next to him on the microphone so
10 that whatever you said will be gotten down.

11 MR. PARKER: The properties that were liened were
12 properties that were already owned by General Motors.

13 MR. MILLER: Correct.

14 MR. PARKER: And that the liens were not given to
15 secure partial progress advance or other payments pursuant to
16 any contract or --

17 MR. MILLER: So stipulate.

18 THE COURT: Okay. Fair enough. We can move onward.

19 MR. PARKER: One final question on this, maybe he
20 wishes to stipulate that as well, that stockholder equity
21 was -- the stockholder equity -- sorry -- the loans were
22 greater than twenty percent of the existing stockholder equity.

23 MR. MILLER: No.

24 MR. PARKER: No. Okay.

25 BY MR. PARKER:

1 Q. In your course of work with the Treasury, have you come to
2 review the financial statements of general motors in December
3 of 2008?

4 A. In some level of detail, yes.

5 Q. Okay. Is it your understanding that General Motors'
6 liabilities were in the neighborhood of 190 billion dollars?

7 A. That sounds about right.

8 Q. And their assets were in the neighborhood of eighty to
9 ninety billion dollars?

10 THE COURT: You mean book value of assets or measured
11 by some different standard?

12 MR. PARKER: Book value, sir.

13 A. Yes, on a book value basis I think both the liability
14 number you quote and the asset number is about correct.

15 Q. Okay. Are you aware of any other valuation number for
16 those assets?

17 A. At that point in time I'm not aware of any valuation work
18 that General Motors had undertaken, no.

19 Q. Okay. Is there any reason for thinking that those assets
20 had a greater value than book value?

21 A. Well, sir, as I'm sure you're aware, the book value of the
22 assets is never a predictor of market value of the assets. So
23 if anything the market value would almost certainly be
24 different then the book value.

25 Q. Okay. Is it safe to say that at least under book value

1 the stockholder equity was negative in December of 2008?

2 A. Yes.

3 Q. Okay. Also, were the share prices of General Motors stock
4 roughly between four dollars and five dollars a share in
5 December of 2008?

6 A. I believe so.

7 Q. And since there are 600 to 650 million shares, the total
8 market value of the shares would have been somewhere between
9 two and a half and three and a half billion dollars, is that
10 correct?

11 A. That's roughly correct.

12 Q. And the initial loan on December 31st was four billion,
13 the initial advance?

14 A. Yes.

15 Q. And that would be greater than twenty percent of two and a
16 half to three and a half billion?

17 A. I believe your math is correct, yes.

18 Q. Okay. Thank you. I believe that you stated that the
19 United States Treasury and General Motors negotiated with
20 regard to the master sale and purchase agreement, is that true?

21 A. Yes.

22 Q. And that they've been in negotiations since, what, March,
23 somewhere in that area?

24 A. Well, not on the specifics of the MSPA, no.

25 Q. But of how General Motors ought to reorganize itself?

1 A. Well, yes there's been an ongoing dialogue between
2 Treasury and General Motors around a range of restructuring or
3 sale options.

4 Q. Okay. Is it true the General Motors management --

5 MR. PARKER: Strike that one second. I'm going to
6 come back to that.

7 Q. There was one other thing I needed to ask you; was the
8 United States Treasury aware, when they issued the or when they
9 entered into the security agreement with the LSA with General
10 Motors that there was a limitation on the liens provision in
11 the bonds?

12 A. Sir, I can't speak to the Treasury's knowledge at that
13 point in time.

14 Q. Okay. Did General Motors management forcefully negotiate
15 with regard to executive retirement benefits?

16 A. Yes.

17 Q. Okay. Did they forcefully negotiate for items that they
18 felt were important to the continuation of the business going
19 forward?

20 A. Yes.

21 Q. Did they forcefully negotiate for what sort of payment
22 should be given to the bondholders?

23 A. Yes.

24 Q. Who determined the ten percent figure?

25 A. Which ten percent, sir?

1 Q. The ten percent offer to the bondholders of share equity?

2 A. But sir, as part of the exchange offer or as part of the
3 sale?

4 Q. Well, let's start with the exchange offer, as part of the
5 exchange offer?

6 A. Well, the circumstances around that time, is the
7 management team wanted to pursue an exchange offer and they
8 felt the more equity they could offer to the bonds the greater
9 the likelihood of success to that exchange offer. They knew
10 that we would have to approve the terms of any exchange offer,
11 in particular because part of the exchange offer expected or
12 was requesting some equitization of Treasury loans. And in the
13 context of those discussions, we told them under no
14 circumstances are we willing to allow more than ten percent of
15 the equity to the bonds and that we weren't sure that we would
16 actually allow ten percent of the equity of the bonds.

17 Q. So the ten percent upper limit on equity in exchange for
18 bonds was set by the Treasury?

19 A. Well, I think that General Motors management did not want
20 to launch an exchange offer with no chance of success. And so
21 they approached us and said obviously one of the conditions of
22 the exchange offer was the commercial terms under which
23 Treasury would agree to. And that was the basis for the
24 discussion that is described.

25 Q. But General Motors wanted to give more than ten percent,

1 is that correct?

2 A. They -- yes, as I stated.

3 Q. And it was Treasury that decided that ten percent was the
4 highest number that should be offered?

5 A. We communicated that the most we'd be willing to entertain
6 would be ten percent.

7 Q. Okay. Did -- with regard to the present offer of ten
8 percent equity in the master sale and purchase agreement, who
9 made that determination?

10 A. That was a Treasury decision.

11 Q. Okay. Did the United States Treasury ever negotiate with
12 the Main Street Bondholder Association?

13 A. I don't believe they ever approached us, sir.

14 Q. Okay. Is it true that in April of 2008, I believe it was
15 the ad hoc bondholder group, made a counterproposal to General
16 Motors of a bond exchange?

17 A. I don't know if they made a formal proposal, I know there
18 was some press discussion about their desire for more equity.

19 Q. And they wanted to do a sixty percent exchange, is that
20 correct?

21 A. I think that was roughly right. I don't remember the
22 exact terms.

23 MR. MILLER: It's '09.

24 MR. PARKER: You're right. It's '09, I stand
25 corrected. It was '09.

1 Q. Did General Motors negotiate with the ad hoc committee?

2 A. I don't know how much interaction they had with the ad hoc
3 committee at that point in time.

4 Q. Okay. Just to be clear on something, do I understand
5 correctly it is the intention of the United States Treasury to
6 fully fund the administrative and priority claims of the
7 remainder of the General Motors estate after the sale?

8 A. Do you mean in connection with the wind down budget we
9 discussed earlier?

10 Q. Yes.

11 A. It is, as we said in our term sheet with the
12 representatives of the bondholders back in May, and as I stated
13 earlier today, it is our intention to fund reasonable expenses.

14 Q. Okay. So you're in negotiations to raise the figure above
15 the 950?

16 A. We're in negotiations around what would be reasonable
17 expenses, yes.

18 Q. Okay. Do you have -- does Treasury have any idea of how
19 long they would expect before the stock and warrants are
20 distributed to the unsecured creditors?

21 A. That is part of the discussions we're having. We
22 understand that the creditors of OldCo would like to see that
23 as soon as possible. We're certainly supportive of that. The
24 question, of course, becomes how quickly could the AlixPartners
25 folks do the work they need to do at OldCo. And we have an

1 incentive for them to do it in an orderly basis. The creditors
2 of OldCo have an incentive for them to do it in an orderly
3 basis. And we're trying to think through how that mechanic
4 would actually work.

5 Q. Well if I recall correctly, Mr. Koch testified yesterday
6 that he believed the heavy lifting could take two to three
7 years and that further wind up could take another two to three
8 years. What I'm curious about is it is anticipated that the
9 unsecured creditors will have to wait until the estate is fully
10 administered before they get their distribution?

11 MR. MILLER: Objection, Your Honor. Mr. Wilson's not
12 an expert on administration of cases under Chapter 11.

13 THE COURT: Sustained. If you've formed a view on
14 that, Mr. Wilson, you can tell him. But if you haven't formed
15 a view on that, tell him that also.

16 THE WITNESS: I don't have a view.

17 Q. Okay. Mr. Wilson, is it -- am I correct in understanding
18 that the funding for the purchase of the assets from General
19 Motors are coming from TARP?

20 A. I believe --

21 Q. Is that a yes, sir?

22 A. I believe so.

23 Q. Okay. Is the government a commercial lender?

24 A. How would you define commercial lender?

25 Q. Are they in the business of lending money?

1 A. Not under normal circumstances but we're not living under
2 normal circumstances, sir.

3 Q. Okay.

4 A. I think we'd both know if we hadn't this company would
5 have liquidated a long time ago.

6 Q. I understand. I just want to know if that's -- I think
7 you've answered your question.

8 THE COURT: Move on to another question please, Mr.
9 Parker.

10 MR. PARKER: Yeah, I will.

11 Q. Did you testify earlier that no commercial lender is large
12 enough to fund a GM restructuring?

13 A. I think at this point in the economic cycle that is
14 correct.

15 Q. Okay.

16 A. As evidenced by the events of the last few months.

17 Q. I'd like to talk about the credit bid for a minute and the
18 factors that would influence an allocation of shares that the
19 Treasury's going to keep in NewCo relative to the DIP financing
20 and relative to the pre-bankruptcy loan of 19.4 billion.

21 If I understand correctly, NewCo is going to have
22 approximately -- NewCo is going to owe the U.S. Treasury a
23 little over seven billion dollars, is that correct?

24 A. In the form of debt, yes.

25 Q. And that will be -- that seven billion dollars is from the

1 DIP facility, is that correct?

2 A. I believe so.

3 Q. Okay. Also, of the 33.3 billion in DIP financing, is part
4 of that being contributed by the Canadian government?

5 A. A portion is being contributed by Canadian governments,
6 the federal government and the government of Ontario.

7 Q. Right. Okay. By Canadian governments, a portion of it
8 is?

9 A. Yes.

10 Q. And do you know how large of a portion?

11 A. I believe it's 3.2 billion dollars.

12 Q. Okay. So the amount of DIP financing that is being
13 replaced by equity by the governments is roughly twenty
14 billion, is that correct?

15 A. I'm not sure how you developed that math, Mr. Parker.

16 Q. I subtracted seven billion debt and 3.2 billion that
17 Canada's contributed, because they're also getting equity. And
18 when you subtract it from 33.3 billion that leaves twenty
19 billion.

20 A. I would have thought closer to twenty-three.

21 Q. You're right, twenty-three. But isn't General Motors also
22 getting -- I'm sorry, not General Motors. Isn't the United
23 States Treasury also getting two billion in preferred stock?

24 A. It's just over two billion, yes.

25 Q. Okay. So when you subtract that out, that would leave

1 twenty-one, is that correct?

2 A. Roughly.

3 Q. So the split between DIP financing that's being converted
4 to equity and old loans that's being converted to equity is
5 something like a fifty-five/forty-five split. The fifty-five
6 being for DIP, the forty-five being for old debt.

7 A. We haven't thought about it that way, sir.

8 Q. Okay. But it would be one way to think about it?

9 A. No, not necessarily. I guess it would be a conceivable
10 way to think about it but we also could have structured it in a
11 range of different ways. We thought about it as was the sum
12 total of our investment/loan into the company.

13 Q. Okay. So you really haven't done an analysis one way or
14 the other?

15 A. I think I testified to that earlier.

16 Q. Right. Okay.

17 MR. PARKER: I believe that's all I have. Thank you.

18 THE COURT: Has everybody now had a chance to --

19 MR. SALZBERG: Your Honor.

20 THE COURT: Mr. Salzberg?

21 MR. SALZBERG: Yes, we had reserved a right on one
22 specific issue, if I may?

23 THE COURT: You May.

24 MR. SALZBERG: Your Honor, I'd like to mark for the
25 record Bondholders' Exhibit 4. And if I may approach?

1 (Bondholders' Exhibit 4, printout of an article released by The
2 Detroit News on their website, was hereby marked for
3 identification as of this date.)

4 THE COURT: Yes.

5 (Pause)

6 CROSS-EXAMINATION

7 BY MR. SALZBERG:

8 Q. Sir, have you had a chance to read this? What is
9 Bondholders' Exhibit 4?

10 A. Yes.

11 Q. And you see that it is a printout of an article released
12 today by the Detroit News on their website?

13 A. That's what it appears to be.

14 Q. Okay. And you would agree with me, would you not, that
15 what the article addresses is the July 10th deadline which we
16 discussed earlier today in your testimony, that being the
17 deadline set by the U.S. Treasury for entry of the sale order?

18 MR. MILLER: Objection, Your Honor. The article is a
19 report on the proceedings that happened before the Court
20 yesterday and a description of those proceedings.

21 THE COURT: Well, if your point is what happened
22 before me as the best evidence and that the article is hearsay,
23 I agree. So, Mr. Salzberg, I've got to figure out where you're
24 going to see whether you're relying on some hearsay exception
25 or something for which this is probative evidence of something

1 I should be assuming as prohibited.

2 MR. MILLER: I would also add, Your Honor, that this
3 morning counsel said -- I believe the question that was
4 propounded was would Mr. Wilson agree with Mr. Henderson saying
5 that the government would not walk. The article doesn't refer
6 to Mr. Henderson saying anything in that respect, Your Honor.

7 THE COURT: I'll need help from you on this respect,
8 Mr. Salzberg.

9 MR. SALZBERG: I'm sorry?

10 THE COURT: I need help from you --

11 MR. SALZBERG: Yes.

12 THE COURT: -- from you to address the points Mr.
13 Miller raised on how to rule on this.

14 MR. SALZBERG: The first issue is, Your Honor, I
15 asked the witness whether or not the U.S. Treasury's position
16 on the July 10th deadline was at odds with public
17 pronouncements made by General Motors. And I specifically
18 referenced some news articles. And then I said that we did not
19 have the articles since they just were released this morning.
20 So that's what we were talking about this morning and that's
21 what we reserved our right to come back and ask the witness
22 about this afternoon.

23 On the second issue regarding the hearsay, if I may,
24 we're not introducing this exhibit into evidence at this point.
25 I've just asked him to identify it and if I can point him to

1 one section of the article and ask if that section of the
2 article is consistent or inconsistent with the U.S. Treasury's
3 position as testified to by Mr. Wilson earlier today.

4 MR. MILLER: It's still -- it's double hearsay, Your
5 Honor.

6 THE COURT: Sustained.

7 MR. SALZBERG: May I attempt to ask a question and
8 get around the hearsay issue because we're not introducing this
9 exhibit to prove the truth of the matter asserted.

10 THE COURT: I only ruled on the last objection. You
11 can ask another question and I'll rule on it if there's a
12 further objection.

13 BY MR. SALZBERG:

14 **Q. Mr. Wilson, would you take a look at the top of page 2 of**
15 **the article and the first paragraph that reads, "While the**
16 **government could stop funding GM" --**

17 MR. MILLER: He's introducing it into the record,
18 Your Honor, that's not the way you do it.

19 THE COURT: You're right, Mr. Miller. The way you've
20 got to do this, if I remember from the twenty years I did this
21 before I became a judge, permit the witness to read it to
22 himself without putting it before the judge. Obviously,
23 there's a little bit of a fiction because I have the exhibit
24 before me. The distinction would be more meaningful if this
25 were a jury trial, obviously.

1 MR. SALZBERG: Right.

2 THE COURT: In this case, the witness can read it and
3 you can ask him a question premised on what he read without
4 taking his statement as being established or as refreshing his
5 recollection. But this is not evidence as to either what the
6 GM's spokeswoman said, intentionally being a little bit vague
7 or whether what she said was true. If there is a memory that
8 the witness has, you can ask him that. If there is a non-
9 repetitive understanding that he has that hasn't been
10 previously asked, you can ask that.

11 But Mr. Miller is right that depending on the portion
12 of it, this article is hearsay, double hearsay or perhaps
13 hearsay and speculation. And it doesn't have any value in
14 establishing that you asked a question in good faith.

15 MR. SALZBERG: Okay. Well, with that in mind I would
16 ask Mr. Wilson to read the first paragraph on page 2. And my
17 question to Mr. Wilson is --

18 Q. Is that section that you just read inconsistent with your
19 prior testimony today as to the Treasury's position on the July
20 10th deadline?

21 A. I'll answer it this way, Mr. Salzberg. I've spent
22 hundreds of hours inside this company. I've met probably
23 upwards of a hundred executives. I know, you know, the vast --
24 I know probably well north of a hundred executives on a first-
25 name basis. I have never once met, nor even heard the name,

1 Renee Rashid Marren (ph.) before. I have no idea who she is
2 and under whose authority she speaks. She clearly has
3 absolutely no insight into the position of the United States
4 auto task force.

5 Q. Again, my question, sir, is the statement that you read
6 consistent or inconsistent with the U.S. Treasury's position to
7 which you testified earlier today?

8 A. Her statement is inconsistent with what I testified to
9 earlier. But as you can tell, it's not even a complete
10 sentence. And what I don't know is what she may have said in
11 the either lead up to this quote that was quoted, if the quote
12 is accurate or if she said a bunch of other things that aren't
13 incorporated into this article.

14 Q. So would the U.S. Treasury be motivated to continue
15 funding if the July 10th deadline is not met, given the amount
16 funded to them at that point?

17 MR. MILLER: On the basis of this newspaper article?

18 MR. SALZBERG: No.

19 THE COURT: Is that a free-standing question?

20 MR. SALZBERG: Free-standing question, Your Honor.

21 MR. MILLER: Objection, Your Honor.

22 THE COURT: All right. The objection is then moot.

23 Let me hear that -- that objection is moot but I need to hear
24 the question again, Mr. Salzberg.

25 Q. Would the U.S. Treasury be motivated to continue funding

1 **General Motors if the July 10th deadline for entry of the sale**
2 **order is not met?**

3 MR. MILLER: Objection, Your Honor. He's answered
4 that question four or five times today.

5 THE COURT: Sustained.

6 MR. SALZBERG: I have no further questions, Your
7 Honor.

8 THE COURT: Have I now given all objectors a chance
9 to cross? All right. Mr. Miller or anyone else want to
10 redirect? Mr. Schwartz or Mr. Jones?

11 MR. SCHWARTZ: Could we confer for one moment?

12 THE COURT: Sure. Try to do it in place, though. I
13 don't want to take a recess.

14 (Pause)

15 REDIRECT EXAMINATION

16 BY MR. SCHWARTZ:

17 Q. Mr. Wilson, when Treasury extended its first loans to GM
18 under the LSA in December of 2008, did it have an expectation
19 of being repaid?

20 A. I wasn't at Treasury at that time.

21 Q. Have you subsequently come to have an understanding about
22 whether Treasury had an expectation that it would be repaid?

23 A. Yes.

24 Q. And what is that understanding?

25 A. That based on both the collateral package for the loans as

1 well as the seniority of the loans and the prospects for
2 General Motors' business, yes that the loan would be repaid.

3 Q. You referred to the collateral package; did Treasury have
4 a view as to whether it was adequately secured under the loans
5 extended pursuant to the LSA?

6 A. I don't know if there was a specific analysis done around
7 the value of the security package at that point in time.

8 Q. Okay. Do you have a view as to whether Treasury was
9 oversecured, undersecured?

10 A. The only view I have now is the liquidation analysis that
11 was done by Mr. Koch who suggests we were, in retrospect,
12 undersecured.

13 Q. In response to Mr. Salzberg's first line of questioning,
14 you talked about the decision to pursue a 363 transaction as
15 opposed to a plan, do you recall that?

16 A. Yes.

17 Q. What was GM's involvement in that decision?

18 A. Well, we pursued -- we considered a variety of different
19 options. We had extensive discussions with the management team
20 to try to understand the implications for the business. The
21 ways in which it could be effectuated; obviously in the course
22 of a 363 sale there would significant operational issues
23 regarding the separation of assets from Old General Motors.
24 And so we had extensive discussions along those lines.

25 Q. And was the ultimate decision to pursue a 363 transaction

1 a decision that was made jointly with General Motors?

2 A. No, it was really a decision by the Treasury.

3 Q. Okay. Subsequently to making that decision, did General
4 Motors and Treasury enter into negotiations on what became the
5 MSPA?

6 A. It was parallel tracked but yes.

7 Q. And could you describe the tenor of those negotiations?

8 A. Contentious, often difficult, sometimes exasperating.

9 Q. Could you elaborate on what particular subjects were the
10 negotiations contentious?

11 A. Well, there are a number of issues where we, as the
12 purchaser, as I mentioned many times earlier, were only willing
13 to acquire -- we wanted to acquire the best assets and we want
14 to only acquire the liabilities that we thought were
15 commercially necessary for the success of NewCo. And there's,
16 kind of, much discussion around both the assets as well as the
17 liabilities.

18 Q. After General Motors filed for bankruptcy, the United
19 States extended further credit pursuant to a DIP facility, is
20 that correct?

21 A. Yes.

22 Q. And the funds for both the LSA and the DIP were TARP
23 funds, is that right?

24 A. I believe so.

25 Q. The transaction that's before the Court today, the 363

1 transaction, does that involve any additional funding from
2 Treasury?

3 A. I don't believe so. No.

4 Q. It's a pure credit bid, is that correct?

5 A. Yes.

6 Q. So in response to Mr. Parker's questioning, when he asked
7 whether the assets for the purchase of GM came from TARP, you
8 were referring to the loans that were extended under the DIP
9 and the LSA, is that right?

10 A. Yes.

11 Q. Okay. You testified, on a few occasions, that Treasury
12 had no intention to fund General Motors after July 10th if the
13 sale order is not entered, is that right?

14 A. Yes.

15 Q. Why not?

16 A. Well, it goes to the core principle or concern about any
17 Chapter 11 proceeding, which is that this business cannot
18 withstand the uncertainty of an open-ended process or a process
19 of uncertain duration. We did an extraordinary amount of work,
20 sir, on this issue in the months leading up to June 1. We
21 talked to, as I mentioned earlier, dozens of experts, advisors,
22 consultants, industry experts, who collectively had thousands
23 of years of experience in the automotive industry, as well as,
24 obviously, the management team at great length. And throughout
25 that period of time, I -- as I mentioned earlier, I can't

1 recall a knowledgeable consultant or expert who thought that
2 General Motors could survive a bankruptcy. There were tons of
3 critical articles written about us as the cowboys in Washington
4 who don't understand the business, who felt that this was a
5 recipe for a disaster and that, even after the successful
6 resolution of the Chrysler case in early May, there are
7 articles to that effect that General Motors is far too large,
8 far too complex and far too complicated to be able to survive a
9 Chapter 11 process.

10 So when -- that was what animated much of our thinking
11 around a 363 sale, as we discussed, and that is what our
12 concerns are about any kind of change to the process. General
13 Motors' market share today is dramatically lower than it was a
14 year ago before the financial distress entered in. Market
15 share this time last year was about twenty-two percent. It's a
16 little bit over eighteen percent now. That's a massive
17 erosion. And that was based on the fears of distress and
18 despite the intervention of the U.S. Treasury. I imagine if
19 there was concern about how that would play out over time, it
20 would only be dramatically larger, in our estimation.

21 So that's why we cannot take an open-ended commitment. We
22 have a fiduciary duty to the U.S. taxpayers. We've made a
23 judgment that the funding associated with this process was
24 appropriate but that any incremental funding we are not willing
25 to provide.

1 Q. Now, I notice in your response you did refer to the
2 liquidation analysis that was performed by AlixPartners.
3 You're familiar with that?

4 A. Yes.

5 Q. And that shows that the government's recovery on its
6 secured claims in a liquidation scenario would be not good, is
7 that right?

8 A. I think "not good" is a fair characterization.

9 Q. Does that affect Treasury's ability to fund -- Treasury's
10 inclination to fund further if a sale order is not entered by
11 July 10?

12 A. Well, the way we look at this, and the reason we look at
13 it the way we do, is it's better to cut one's losses and that,
14 while we would certainly have substantial losses if GM entered
15 into a liquidation in July, for sure we'd have extremely
16 significant losses. We believe that that is an economically
17 more rational decision than funding into an open-ended process
18 whereby the losses could be much, much more dramatic.

19 Obviously, entering into that process, sir, there are no
20 certain outcomes. It could be that we fund even more money and
21 have no more of a recovery and therefore lose more. It could
22 be that we fund more money and have an outcome that's not
23 commercially satisfactory to the U.S. Treasury. There are a
24 whole range, in fact arguably an infinite number, of outcomes
25 that many of which could lead to much more substantial losses.

1 Q. Now, in response to questioning by the representative of
2 the state's attorney general, you remember about big (C) Claim
3 versus little (c) claim?

4 A. Yes.

5 Q. You said that Treasury hadn't made a determination about
6 whether it would fund if the sale order released little C
7 claims but not big C Claims; remember that?

8 A. Yes.

9 Q. And then another questioner asked you about the 62,000
10 dollars, what Treasury would do if that were a de minimis
11 payment. Do you recall that?

12 A. Yes.

13 Q. I believe you testified earlier that Treasury was in the
14 process of considering or maybe had already considered all of
15 the objections that had been filed to the sale, is that
16 correct?

17 A. Yes.

18 Q. And that you and your designates and your counsel were
19 negotiating a final version of the sale order, is that correct?

20 A. Yes.

21 Q. And is it your expectation that that final sale order,
22 when it is submitted to Judge Gerber, will reflect the
23 Treasury's final position on all of the objections that have
24 been filed?

25 A. That's correct.

1 Q. And if that final order, as it reflects Treasury's
2 resolution of all of the objections that have been filed, is
3 not entered on or before July 10th, does Treasury have an
4 intention to fund?

5 A. No.

6 MR. SCHWARTZ: Thank you.

7 THE COURT: Okay. Anybody else on redirect? Mr.
8 Miller?

9 REDIRECT EXAMINATION

10 BY MR. MILLER:

11 Q. Mr. Wilson, prior to your joining the Treasury, what was
12 your occupation?

13 A. I was an investor, sir.

14 Q. And what does that encompass?

15 A. Well, I spent virtually all of my career post-college
16 investing in companies, many of which, in most cases, that were
17 troubled.

18 Q. Distressed companies?

19 A. Oftentimes, yes.

20 Q. And often on the side representing a secured investor?

21 A. Typically, yes.

22 Q. And in your --

23 A. More often, yes, excuse me.

24 Q. I'm sorry.

25 A. I'm sorry, I meant to say "often". I didn't -- I

1 shouldn't say "typically".

2 Q. And in your experience over the course of years as a
3 secured creditor representing a secured creditor, have you
4 found it unusual for a secured creditor to lose confidence in a
5 CEO?

6 A. Unfortunately, no. It happens all the time.

7 Q. And what does a secured creditor do in those kind -- in
8 that circumstance?

9 A. It depends on the situation. If there are no -- there's
10 no breach of covenants or no need for incremental capital, a
11 secured creditor could complain. But in the events where, as I
12 faced a number of times in my past, where the company requires
13 additional funding or is in violation of a covenant or some
14 other term of the loan agreement, it would be typical for that
15 lender to indicate their dissatisfaction with management and
16 indicate they're not willing to fund unless certain things take
17 place.

18 Q. And in connection with this situation, Mr. Wilson, the --
19 after February 7, the viability plan that General Motors had
20 submitted was deemed to be inadequate by the Treasury?

21 THE COURT: Pause, Mr. Wilson. Mr. Richman's --

22 MR. RICHMAN: I apologize.

23 THE COURT: Come to a microphone, please.

24 MR. RICHMAN: I listened to a few of the questions to
25 try to understand where this is going. I don't really think

1 there's any foundation in the record for this witness to be
2 qualified as an expert in connection with his prior
3 experiences. There isn't anything of record that really
4 explained -- he said he was an investor and, from that, Mr.
5 Miller extrapolated that he had some knowledge of how secured
6 creditors act. I don't believe there's any foundation for that
7 and I would ask that the background and foundations be laid
8 before we continue with this line of questioning.

9 THE COURT: All right, well, there's a Second Circuit
10 case on point and which I relied on; I think it was the Perry
11 Koplik case. You're right that he can't give lay-opinion
12 testimony. There is some room under Second Circuit authority,
13 and I'd have to take a recess to get the name of the case that
14 I cited in Perry Koplik for observations that were made. But
15 on balance, Mr. Miller, if he's trying to talk about what's
16 common in the industry, you have to lay a foundation for what
17 he knows about the industry.

18 MR. MILLER: No, Your Honor, I asked him what his --
19 in his experience as an investor and a secured creditor, in the
20 course of his career, his experience, not common in the
21 industry.

22 THE COURT: The problem, Mr. Richman, is you put into
23 issue whether the government was acting unusually when it
24 expressed its concerns about Mr. Henderson's predecessor.

25 MR. RICHMAN: Your Honor, I agree with that. I just

1 don't understand, from the record so far, what this particular
2 witness's experience actually is. I don't know who he worked
3 for, how many years, how many transactions like this he was
4 involved in. Are we talking about --

5 MR. MILLER: He could take him, Your Honor.

6 MR. RICHMAN: -- two cases? Are we talking about ten
7 cases? That's the kind of foundation I would need.

8 THE COURT: I'm going to sustain the objection on
9 this record, but I'm going to let you inquire more, Mr. Miller,
10 as to his ability to observe. And you're not to ask him a
11 question of opinion. You're only to ask him a question as to
12 what he observed.

13 MR. MILLER: Yes, sir.

14 BY MR. MILLER:

15 Q. Mr. Wilson, would you briefly describe to us your business
16 experience since graduating from college?

17 A. Sure. I graduated from Harvard College in 1993. I went
18 to work in the investment banking division of Goldman Sachs,
19 which involves a number of advisory transactions, and assessed
20 a number of principal transactions. At that point I
21 transitioned to a full-time investment role for the balance of
22 my career, first at a firm called Clayton Dubilier & Rice, with
23 a break to attend Harvard and graduate from Harvard Business
24 School. I then joined The Blackstone Group in the private
25 equity division and then left there to help build a firm called

1 Silver Point Capital, which is extraordinarily active in
2 distressed and troubled situations.

3 Q. And during -- how many years were you at Silver Point
4 Capital?

5 A. I was at Silver Point for about five -- a little bit over
6 five years.

7 Q. And during that period of time, you were involved in
8 situations involving distressed entities?

9 A. Many situations, yes.

10 Q. In which Silver Point had an investment?

11 A. Yes. And during that period of time, Silver Point,
12 through its principal finance business where I sat on the
13 investment committee for that business, and it was the
14 investment committee that approved all the loans of that
15 business, probably made between fifty and a hundred secured
16 loans, typically to distressed companies.

17 Q. And in connection with circumstances involving distressed
18 companies, what did you observe in terms of workouts and
19 restructurings as to the eventual disposition of the CEO?

20 A. It would depend on the circumstances. But in situations
21 where the lender no longer had confidence in the management
22 team, and particularly the CEO, and that company was either --
23 needed capital from us, additional capital beyond what had
24 already been lent, or was in violation of a covenant or some
25 other breach under the agreement, we would be not shy about

1 communicating our position.

2 Q. Thank you. Now, in connection with Mr. Henderson, Mr.
3 Wilson, has the Treasury offered Mr. Henderson any contract of
4 employment?

5 A. I believe Mr. Henderson realizes and knows that we intend
6 for him to be the CEO, but I don't believe we've offered a
7 contract.

8 Q. Do you know if Mr. Henderson has an employment contract
9 now?

10 A. I do not think he does.

11 Q. Has the Treasury offered employment contracts to any of
12 the executives at GM who may be going to New GM?

13 A. Not at this point in time, no.

14 Q. Who is Mr. Ron Bloom?

15 A. He is a colleague of mine on the auto task force.

16 Q. And did Mr. Bloom participate in all of the negotiations
17 concerning General Motors?

18 A. A very small number.

19 Q. In the negotiations with the UAW, who participated in
20 those negotiations?

21 MR. RICHMAN: Your --

22 THE COURT: All right, pause.

23 MR. RICHMAN: Your Honor, I think we're beyond
24 anything that was covered in cross, so I really don't know
25 where this is going. But I --

1 THE COURT: Sustained, unless you can come back
2 closer to what we --

3 MR. MILLER: Okay.

4 THE COURT: -- covered in cross, Mr. Miller.

5 Q. Mr. Wilson -- I'm sorry, Mr. Wilson, you were cross-
6 examined in connection with the agreement made with the UAW
7 VEBA?

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. And the shares of stock in NewCo which will be given to
12 the VEBA?

13 A. Yes.

14 Q. Who's giving those shares of stock to the VEBA?

15 A. NewCo.

16 Q. And NewCo is the Treasury-sponsored entity?

17 A. Yes.

18 Q. And that's coming out of the shares that are being
19 acquired by the Treasury in NewCo?

20 A. That's correct.

21 Q. Does the Treasury have any plans as to the disposition of
22 its equity position?

23 A. Well, certainly over time we anticipate selling our
24 shares.

25 Q. Is there any contemplation of an IPO?

1 A. We're anticipating an IPO sometime in 2010.

2 Q. 2010, thank you. Mr. Parker examined you about the credit
3 bid. Do you remember if -- were you here during the testimony
4 of Mr. Worth?

5 A. Yes, I was.

6 Q. And did you hear Mr. Worth testify as to the estimated
7 purchase price?

8 A. I believe so. I wasn't, frankly, paying complete
9 attention to it, but I do remember him talking about it
10 briefly.

11 Q. Do you recall Mr. Worth using a figure of ninety-one-plus
12 billion dollars as the net purchase price?

13 A. No, actually I don't recall that.

14 Q. In connection with the purchases, the Treasury -- excuse
15 me, has New GM assumed liabilities?

16 A. Yes.

17 Q. So that the purchase price includes a series of elements:
18 the credit bid, the assumption of liabilities, the stock which
19 is going to OldCo?

20 A. Yes.

21 Q. And has the Treasury done a calculation as to what that
22 total purchase price would be?

23 A. We have not.

24 Q. Are you familiar with the Chapter 11 case of Delphi
25 Corporation?

1 A. Yes.

2 Q. Is the Treasury involved in that Chapter 11 case?

3 A. We're involved and to the respect of we -- in working with
4 General Motors to provide the funding that will be associated
5 with that case.

6 Q. And do you know how long that Chapter 11 case has been
7 pending?

8 MR. RICHMAN: Your Honor, I have to object --

9 A. I believe a file --

10 THE COURT: Wait.

11 MR. RICHMAN: -- to this line. Again, I don't see
12 what relevance this has to anything that we've had on record or
13 the motion.

14 THE COURT: Mr. Miller?

15 MR. MILLER: Your Honor, the Treasury is intimately
16 involved in the Delphi case. The Delphi case is a Chapter 11
17 case which was supposed to be confirmed two years ago.

18 THE COURT: All right, I don't want you to
19 testifying, but you've satisfied me that it's relevant and it's
20 within the scope of cross. So the objection's overruled, but I
21 don't want you testifying --

22 MR. MILLER: Yes.

23 THE COURT: -- Mr. Miller. It's got to come out of
24 Mr. Wilson, a witness.

25 BY MR. MILLER:

1 Q. Mr. Wilson, do you know how long the Delphi case has been
2 pending?

3 A. I believe they filed in the fall of 200 -- well, it's
4 three and a half -- little bit over three and a half years ago,
5 so the fall of 2005.

6 Q. October of 2005?

7 A. That sounds correct.

8 Q. And is the Delphi case administratively solvent?

9 A. Delphi's been on the verge of liquidation for, in my
10 opinion, months.

11 MR. MILLER: Thank you, Your Honor. That's all.

12 THE COURT: Anybody else for redirect?

13 Any recross?

14 MR. RICHMAN: One second, Your Honor.

15 THE COURT: Mr. Richman, sure.

16 MR. RICHMAN: No, Your Honor.

17 THE COURT: Any other --

18 MR. JAKUBOWSKI: I have one --

19 THE COURT: Mr. Jakubowski, come up, please.

20 RE CROSS-EXAMINATION

21 BY MR. JAKUBOWSKI:

22 Q. Mr. Wilson, on redirect you were -- you said that the auto
23 task force decided to pursue the sale and made decisions about
24 the separation of assets and liabilities, right?

25 A. Yes.

1 Q. And you had said that what, quote, "we wanted to do was to
2 acquire only the commercially necessary liabilities for the
3 success of the business," correct?

4 A. Yes.

5 Q. So I'd like to understand a little bit of just who "we"
6 is, or "we" are. So the auto task force is comprised primarily
7 of four individuals, right, in terms of the decision-makers?

8 A. Well, I'm not sure which four you're --

9 Q. Well, let me ask this. The auto task force is a division
10 of Treasury?

11 A. I don't -- to be honest with you, I have no idea --

12 Q. It's --

13 A. -- how the bureaucracy works.

14 Q. But it is part of the executive branch, correct?

15 A. Yes.

16 Q. And the head of the executive branch is President Obama,
17 correct?

18 A. Yes.

19 Q. Now, has anyone --

20 MR. SCHWARTZ: Objection. This is really quite
21 beyond the scope of redirect.

22 MR. JAKUBOWSKI: I have one final question, Your
23 Honor, with respect to the question of "we", and that's it.

24 THE COURT: Why don't you go back to that question,
25 then?

1 MR. JAKUBOWSKI: Okay.

2 Q. Was the head of the executive branch, President Obama,
3 ever advised about the treatment of preexisting product
4 liability --

5 MR. SCHWARTZ: Objection.

6 Q. -- claims in the sale?

7 MR. SCHWARTZ: Objection. That's privileged.

8 MR. JAKUBOWSKI: I just asked whether he was advised.
9 I didn't ask --

10 MR. SCHWARTZ: Objection. There's a presidential
11 privilege.

12 THE COURT: Sustained.

13 MR. JAKUBOWSKI: I have no further questions, Your
14 Honor.

15 THE COURT: Okay. All right, any re-redirect? All
16 right, Mr. Wilson, you're excused.

17 THE WITNESS: Thank you.

18 THE COURT: It's now about 1:20. Mr. Kennedy, you're
19 rising to cross whom?

20 MR. KENNEDY: No, Your Honor. I'm not rising to
21 cross anyone. I'm rising on a sort of a housekeeping matter
22 because I had a sense that we might be moving into a break.
23 And I have a number of witnesses that have been here, prepared
24 to be available for cross-examination, which I don't think will
25 occur, in connection with declarations.

1 THE COURT: Well, you're reading my mind, Mr.
2 Kennedy, because I wanted to get my arms around who we have
3 left to cross. And if there are people who are not going to be
4 crossed, subject to your rights to be heard, I'm of the view
5 that I should excuse them from having to be in the courtroom.
6 That's kind of your point, Mr. Kennedy?

7 MR. KENNEDY: Exactly, Your Honor.

8 THE COURT: Okay. Mr. Miller or the folks on the
9 movant's side, you made a motion to strike the testimony -- or
10 to exclude the testimony of what I think were Mr. Kennedy's
11 folks. My tentative (sic) on that, subject to your right to be
12 heard, and I won't make Mr. Kennedy respond unless you want to
13 push it --

14 MR. KENNEDY: Your Honor --

15 MR. MILLER: It wasn't Mr. Kennedy, Your Honor.

16 MR. KENNEDY: -- there is no such motion.

17 THE COURT: I'm sorry? I thought I got an indication
18 of a desire to exclude those affidavits --

19 MR. MILLER: No, Your Honor.

20 THE COURT: -- a written document to that effect.
21 I'll try to find it.

22 MR. MILLER: Hold on just a moment, Your Honor, if
23 you may.

24 THE COURT: Sure.

25 UNIDENTIFIED SPEAKER: Well, it's a big firm, but at

1 least Mr. Miller has said he's not prepared to --

2 MR. MILLER: Your Honor, if there was such a motion
3 it's withdrawn.

4 THE COURT: Fine. Is there a desire to cross-examine
5 Mr. Kennedy's folks?

6 MR. MILLER: Not by the debtors, Your Honor.

7 THE COURT: Is there a desire by anybody to cross-
8 examine Mr. Kennedy's folks?

9 UNIDENTIFIED SPEAKER: No.

10 THE COURT: All right. With no response, Mr.
11 Kennedy, your guys' declarations or affidavits or whatever they
12 are, are deemed to be part of the record and cross has been
13 deemed to be waived. You can tell them, if you choose to, that
14 they needn't stay, but if they want to stay they may.

15 MR. KENNEDY: Thank you, Your Honor. Just for the
16 record, that constitutes the declarations of James Clark, Debra
17 Turner, Dennis Bingham, David Hill, Earl Williams, Joe Patrick,
18 Betty Humphrey and John Humphrey, all of which have previously
19 been put onto the docket of the case. And I'll just note that
20 we are also of course moving for the admission of Exhibits 9
21 through 12, which is the large book that had previously been
22 tendered to the Court and, in fact, a number of parties have
23 used during this proceeding.

24 THE COURT: All right. Is there any objection to or
25 disagreement with what Mr. Kennedy said?

1 MR. MILLER: No, Your Honor.

2 THE COURT: All right, hearing none, your stuff is
3 admitted, Mr. Kennedy. And my ruling on what your folks get
4 into, if they choose to, remains.

5 (IUE-CWA's Exhibit 9, transcript of deposition of Michael
6 Raleigh dated 6/28/09 and supporting documents, were hereby
7 received into evidence as of this date.)

8 (IUE-CWA's Exhibit 10, transcript of deposition of Fritz
9 Henderson dated 6/28/09 and supporting documents, were hereby
10 received into evidence as of this date.)

11 (IUE-CWA's Exhibit 11, transcript of deposition of Harry Wilson
12 dated 6/25/09 and supporting documents, were hereby received
13 into evidence as of this date.)

14 (IUE-CWA's Exhibit 12, IUOE documents, were hereby received
15 into evidence as of this date.)

16 THE COURT: Okay, to what extent, folks, do we have
17 further cross at this point?

18 MR. BROMLEY: Your Honor, James Bromley of Cleary
19 Gottlieb on behalf of the UAW. We also have a declaration of
20 David Curson to be offered into evidence, and he's available
21 for cross. We just wanted to --

22 THE COURT: Right.

23 MR. BROMLEY: -- clarify that.

24 THE COURT: Is there any objection to the Curson
25 declaration being taken as his direct testimony?

1 MR. MILLER: Not by the debtors, Your Honor.

2 THE COURT: And not by anybody. Okay, the Curson
3 declaration is in as direct testimony. Is there a desire to
4 cross Mr. Curson?

5 MR. RICHMAN: Yes, Your Honor.

6 THE COURT: Okay. Mr. Richman, what's your extent as
7 to how long you want to take to do that, you or your partner?

8 MR. SALZBERG: Your Honor, ten, fifteen minutes at
9 most.

10 THE COURT: What I think I would like -- and thank
11 you, Mr. Salzberg. Is there anybody who is going to see a need
12 to cross-examine anybody besides Mr. Curson? I think we've
13 covered all of the declarants, if I'm not mistaken. No
14 response. What we're going to do, Mr. Bromley, Mr. Salzberg,
15 we're going to take -- I'm going to take Mr. Curson on cross
16 now. That should complete all of the testimonial evidence
17 unless the debtors have rebuttal beyond what they did by
18 redirect. Mr. Miller, do you have a sense as to whether you
19 will?

20 MR. MILLER: I doubt it, Your Honor.

21 THE COURT: Okay. Then what I would be of a mind to
22 do is to take -- let people have a lunch break, about an hour,
23 and to get into argument after the lunch break. Mr. Parker?

24 MR. PARKER: Your Honor, I had attached to my
25 original declaration two determinations by the Treasury

1 Department, and I'd like them to be admitted.

2 THE COURT: What exactly are we talking about?

3 MR. PARKER: It's in regard to the TARP issue, Your
4 Honor. I simply wish the record to show that Treasury had --
5 well, what the position of the Treasury had been on TARP on two
6 particular occasions.

7 THE COURT: What I think I would like you to do -- if
8 you're talking about documents out of government files, it's
9 possible that it's an evidentiary matter, putting aside your
10 standing issues. You and Mr. Schwartz can agree on whether or
11 not I should take judicial notice of them. If there are
12 particular exhibits that are of a different character, I need
13 to have a dialogue on what they are so I can make the necessary
14 evidentiary rulings.

15 MR. PARKER: All right, I'll --

16 THE COURT: But frankly, folks, I have Mr. Curson
17 waiting to be crossed here.

18 MR. PARKER: Right. Okay.

19 THE COURT: And I think, out of courtesy to him and
20 to all the other lawyers in the room, the other two or three
21 rooms, the overflow rooms, I would like to complete the
22 opportunities for cross and redirect of Mr. Curson. And then
23 it might make sense for you and Mr. Schwartz to talk over the
24 lunch break to see whether he has any problems with your
25 exhibits. And when I said "Mr. Schwartz", I didn't mean to

1 exclude anybody else, but I assume he's the guy who's
2 principally going to care about that.

3 MR. PARKER: Right. Thank you, Your Honor. I just
4 thought I should bring it up now.

5 THE COURT: Sure. I understand. Okay, is --

6 MR. MILLER: Your Honor, one housekeeping detail.

7 THE COURT: Yes.

8 MR. MILLER: I'd like to move into evidence, Your
9 Honor, the affidavit of service of the Garden City Group Inc.

10 THE COURT: Could you come closer to a mic --

11 MR. MILLER: Yes.

12 THE COURT: -- because I didn't hear you.

13 MR. MILLER: I would move to admit into evidence,
14 Your Honor, the second amended certificate of service of
15 Jeffrey Stein, the vice president of business reorganization
16 with the Garden City Group Inc.

17 THE COURT: Okay. Any objection? No objection.
18 It's admitted.

19 (Debtors' Exhibit 17, second amended certificate of service of
20 Jeffrey Stein of the Garden City Group, was hereby received
21 into evidence as of this date.)

22 MR. MILLER: That would be, I think, Your Honor --
23 that is Exhibit 17.

24 UNIDENTIFIED SPEAKER: Yes.

25 MR. MILLER: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. SCHWARTZ: And just so the record is clear on the
3 other issue, the two determinations that Mr. Parker were
4 referring to were attached as exhibit to the government
5 statement on the opening day and can be incorporated into the
6 record here without objection, or, as you did at the DIP
7 hearing, you can take judicial notice of the two
8 determinations.

9 THE COURT: Either way, then, it's in. And that's no
10 longer a matter of dispute between you and Mr. Parker?

11 MR. SCHWARTZ: Exactly, subject to, as Your Honor
12 said, the arguments about standing and relevance.

13 MR. PARKER: So they're a part of the record now?

14 THE COURT: The two documents Mr. Schwartz was
15 talking about are, yeah, but I got the impression that you had
16 another two, Mr. Parker.

17 (Two Treasury Department determinations were hereby received
18 into evidence as of this date.)

19 MR. PARKER: No, no, just those two.

20 THE COURT: All right, then that discussion --

21 MR. PARKER: I mean, plus the one I'd already
22 introduced, Parker's Exhibit 1.

23 THE COURT: Fair enough.

24 MR. PARKER: Would these bear exhibit -- his exhibit
25 numbers or what?

1 THE COURT: I don't think it makes a whole lot of
2 difference, folks, what numbers are given to exhibits. Okay.
3 Is Mr. Curson here -- oh, Mr. Eckstein?

4 MR. ECKSTEIN: Your Honor, I'm sorry, I understand
5 that you'd like to hear Mr. Curson, and I have no objection to
6 that. Once he concludes, I'd like to just address the Court
7 with respect to some issues regarding the closing arguments but
8 I thought I would do it after the testimony.

9 THE COURT: Absolutely. Mr. Curson, come up, please.
10 Come on over here, please, Mr. Curson, and remain standing for
11 a minute. Karen?

12 THE CLERK: Please raise your right hand.

13 (Witness duly sworn)

14 THE COURT: Have a seat, please, Mr. Curson. Mr.
15 Salzberg, whenever you're ready.

16 MR. SALZBERG: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SALZBERG:

19 Q. Good afternoon, Mr. Curson.

20 A. Good afternoon.

21 Q. Just a few questions. You are -- your declaration's
22 proffered on behalf of the UAW, is that correct?

23 A. That is correct.

24 Q. Okay. And the UAW had a collective bargaining agreement
25 with General Motors pre-petition, is that correct?

1 A. We did.

2 Q. And that CBA, we'll call it, was amended on, I believe, in
3 May of 2009, is that correct?

4 A. That is correct.

5 Q. So, prior to the petition date, the CBA was amended?

6 A. Yes.

7 Q. Okay. How is the CBA -- procedurally, how was the CBA
8 amended?

9 A. How was the CBA amended? In December of 2008, Chrysler
10 and General Motors came to us; they had requested a bridge loan
11 from the government in order to survive. The bridge loan --
12 the terms of the bridge loan set a number of targets that
13 General Motors and Chrysler had to meet in order to receive
14 bridge loans. Some of those targets included being
15 competitive, having labor agreements that were competitive with
16 transplants; that's foreign-owned auto manufacturers that are
17 located in the United States. They approached us and required
18 to bargain amendments to the 2007 labor agreement in order to
19 meet those targets, in order to get the bridge loans, in order
20 to survive. So we agreed and we entered into the negotiations.

21 Q. Okay. And once the parties -- the parties being the UAW
22 and General Motors -- reached agreement, was the proposed
23 amended CBA submitted to the union members for ratification?

24 A. Well, it's a little more complicated than that. We
25 reached an initial tentative agreement in February, February

1 17th, which we thought met the targets of the terms of the loan
2 agreement. And shortly thereafter, President Obama said
3 that -- that labor agreement was folded into a plan, an overall
4 plan by both General Motors and Chrysler, and submitted to the
5 government for their proposal to be a company that could
6 survive after the loans.

7 President Obama came out and announced on March 30th, I
8 believe was the date, that the companies didn't go far enough
9 and the labor agreements didn't go far enough, and we were
10 charged with the responsibility to go back in and renegotiate
11 what we had already negotiated as an amendment to the 2007
12 agreement, which then -- we began -- in ultimately about May
13 23rd we reached a tentative agreement, the second tentative
14 agreement that we presented to our members for ratification.

15 Q. Okay. And so, just so I'm clear, the amended CBA was
16 submitted to your membership for ratification sometime after
17 May 23, 2009?

18 A. That is correct.

19 Q. And when was the amended CBA actually ratified?

20 A. It was ratified -- the vote was consolidated and announced
21 on May 29th.

22 Q. And when did the --

23 MR. SALZBERG: Well, strike that.

24 Q. Is the amended CBA now in place?

25 A. The amended CBA is effective now, yes.

1 Q. When did it become effective, sir?

2 A. The Monday following ratification.

3 Q. Do you know the date?

4 A. I don't know the date --

5 Q. Okay.

6 A. -- but I --

7 Q. Was the effectiveness of the amended CBA contingent upon
8 anything happening apart from ratification?

9 A. Certainly. All of the amendments are considered ratified
10 based on the terms of ratification. That means all of the
11 components of the amendments were voted on in ratification by
12 our members. That meant our members couldn't -- and as an
13 example, the collective bargaining agreement versus the VEBA,
14 the agreement for our retirees' health care, they were two
15 major components of the agreement, but they were voted on in
16 one vote. Our members had to vote it up or vote it down. And
17 if either one -- if there wasn't compliance with either one, we
18 would consider the amendments not ratified and not in play.

19 Q. So is it -- I'm sorry, sir, is it your testimony that
20 there is a provision within the amended CBA that says if the
21 new VEBA agreement is not approved by the Court, the amended
22 CBA is not effective?

23 A. We would consider it -- yes, if it -- if the new VEBA --
24 if the terms of the agreement -- if the health care for our
25 retired members was not going to be provided for any reason, if

1 the Court denied the VEBA, if the company couldn't fund the
2 VEBA or couldn't fund at any point, that they couldn't deliver
3 what they agreed to deliver to our retired members, we, at that
4 point, would have a right to withdraw all of the amendments to
5 that agreement.

6 Q. Okay. And are those terms regarding the UAW's right to
7 withdraw from the CBA, are they contained in a memorandum of
8 understanding?

9 A. They're in the settlement agreement.

10 Q. In the UAW retiree settlement agreement?

11 A. It's in the settlement agreement for the amendments for
12 the collective bargaining agreement that we signed on the 29th.

13 Q. I'm sorry, sir, is that attached -- is that agreement
14 attached to your declaration?

15 A. Yeah, I believe it is, yes. It's in with the white book.

16 Q. Yeah.

17 (Pause)

18 Q. Well, there are multiple attachments to your declaration.
19 Do you know --

20 A. It's entitled "The White Book". I don't have it with me.
21 I don't have it in front of me.

22 MR. SALZBERG: It's in the declaration? Okay.

23 (Pause)

24 A. Okay, I have it here.

25 Q. Does it bear a page number on the bottom?

1 A. It's -- it looks like an "i".

2 MR. SALZBERG: If I may approach, Your Honor.

3 A. Roman numeral i.

4 THE COURT: Yes, you may approach.

5 Q. All right. And so, sir, you pointed to the 2009
6 modifications to the 2007 UAW/GM agreement, contract settlement
7 agreement, dated May 17th, 2009, is that correct?

8 A. That is correct.

9 MR. SALZBERG: May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. And just so the record's clear, it is the UAW's position
12 that if the -- that that agreement provides that if the new
13 VEBA is not approved by the bankruptcy court in the UAW retiree
14 settlement agreement, the amendments to the collective
15 bargaining agreement can be nullified?

16 A. That is correct.

17 Q. Okay. All right.

18 MR. SALZBERG: No further questions, Your Honor.

19 THE COURT: Okay. Anybody else want to question Mr.
20 Curson? Mr. Bromley, any redirect?

21 MR. BROMLEY: No redirect, Your Honor. Just to move
22 admission of the declaration and exhibits into evidence as
23 UAW-1.

24 THE COURT: Okay. Any objection?

25 MR. MILLER: No objection.

1 THE COURT: No objection. Hearing no objection, it's
2 admitted.

3 (UAW-1, declaration of David Curson and accompanying exhibits,
4 was hereby received into evidence as of this date.)

5 MR. MILLER: Beyond Mr. Bromley, does anybody have
6 redirect? All right, folks, am I correct that everybody who
7 wanted to have a chance to ask questions of Mr. Curson has had
8 that opportunity? No response. Mr. Curson, thank you. You're
9 excused.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. Before we break for lunch, folks,
12 to what extend does anybody have a desire to put anything
13 further into the evidentiary record at this point? I took an
14 extra long pause this time. Mr. Bressler?

15 MR. BRESSLER: Your Honor, I just wanted to confirm,
16 we did submit our deposition designations and it's subject to
17 counter-submissions. I would move their admission.

18 THE COURT: Okay. Once those counterdesignations are
19 made, my tentative, subject to your rights to be heard, is
20 they're a part -- they also become part of the record. Anybody
21 have a different view? No. Okay. They're in, Mr. Bressler --

22 MR. BRESSLER: Thank you, Your Honor.

23 THE COURT: -- or will be in when counterdesignations
24 arrive. Is there --

25 MR. ROY: Excuse me, Your Honor.

1 THE COURT: Excuse me, I don't know your name.

2 MR. ROY: It's Casey Roy with the Texas AG's office.
3 May I have just a moment with counsel?

4 THE COURT: Sure. Sure.

5 MR. ROY: Thank you.

6 (Pause)

7 MR. ROY: Your Honor, this is the exhibit list that
8 was filed by the state of Texas.

9 (Pause)

10 MR. ROY: Your Honor, for the Court's information,
11 these are the participation agreement documents that relate to
12 the dealer modifications. And for the record, Your Honor, all
13 of this was timely filed.

14 (Pause)

15 MR. ROY: Your Honor, we move to offer into evidence
16 Exhibits 1 through 9 for the state of Texas.

17 THE COURT: Okay. Any objections?

18 MR. MILLER: No objection.

19 THE COURT: No objections. They're admitted.

20 (Texas AG-1, General Motors Corp. cover letter dated 6/1/09
21 regarding proposed Participation Agreements relating to GM's
22 dealer agreements and restructuring plans, was hereby received
23 into evidence as of this date.)

24 (Texas AG-2, General Motors Corp. proposed Participation
25 Agreement dated 6/1/09 regarding GM dealer sales and service

1 agreements, was hereby received into evidence as of this date.)
2 (Texas AG-3, General Motors Corp. proposed letter agreement
3 dated 6/1/0/ modifying the Participation Agreement, was hereby
4 received into evidence as of this date.)
5 (Texas AG-4, informal request for production to Weil Gotshal
6 and Manges, LLP dated 6/23/09 from J. Casey Roy, was hereby
7 received into evidence as of this date.)
8 (Texas AG-5, e-mail dated 6/23/09 from J. Casey Roy to Weil
9 Gotshal and Manges, was hereby received into evidence as of
10 this date.)
11 (Texas AG-6, General Motors Corp. cover letter dated 6/1/09
12 accompanying the final version Participation Agreements, was
13 hereby received into evidence as of this date.)
14 (Texas AG-7, General Motors Corp. final version of
15 Participation Agreement dated 6/1/09, was hereby received into
16 evidence as of this date.)
17 (Texas AG-8, General Motor Corp. final version of proposed
18 letter agreement dated 6/9/09 modifying Participation
19 Agreement, was hereby received into evidence as of this date.)
20 (Texas AG-9, e-mail dated 6/26/09 from Evert Christensen
21 forwarding Exhibits 7 & 8 to J. Casey Roy was hereby received
22 into evidence as of this date.)
23 MR. ROY: Thank you, Your Honor.
24 THE COURT: All right. Just hand it up personally to
25 me, please, Mr. Roy.

1 MR. ROY: Thank you.

2 THE COURT: Thank you. Okay, now that we took care
3 of Mr. Roy's needs and concerns, anybody else? Mr. Parker, I
4 thought your issues were addressed.

5 MR. PARKER: Yeah, I only have one other, Your Honor,
6 which is how can I get a list of all the exhibits?

7 THE COURT: By checking the docket like every other
8 party in the case.

9 MR. PARKER: Oh, because, I mean, like, I have a
10 witness and exhibit list, but I don't have -- I don't know
11 whether they put them in that order or not.

12 THE COURT: Mr. Parker, I'm not in a position to give
13 you any more help than any of the other lawyers in the case
14 that are subject to --

15 MR. PARKER: Thank you.

16 THE COURT: Okay. All right, the evidentiary record
17 is now closed, ladies and gentlemen. Mr. Eckstein, you had
18 some matters you wanted to bring to my attention.

19 MR. ECKSTEIN: Your Honor, thank you. I was simply
20 going to rise in response to the suggestion that Your Honor had
21 made about the timing for the closing arguments. And I gather
22 Your Honor's initial inclination is to move forward today with
23 closing arguments, and I assume Your Honor would like to try to
24 wrap this up as promptly as possible. The only point I wanted
25 to bring out was, putting aside -- I'm sure there are certain

1 parties who would always like a little more time to prepare,
2 but with that one issue to one side, there are several
3 significant issues that we've heard about both yesterday and
4 today, in a conference with Your Honor and in testimony, that
5 appear to be very close to favorable resolution. And at least
6 from the committee's perspective and, I believe, listening to
7 the objections from various other parties, it would seem to me
8 that the resolution of those issues would dramatically narrow
9 the issues that are the subject of debate and that will have to
10 be considered by Your Honor. And I simply wanted to raise with
11 Your Honor whether or not there was an opportunity to see if we
12 could actually bring closure to some of the issues that seem to
13 be on the verge of resolution and --

14 THE COURT: That would no doubt narrow matters --

15 MR. ECKSTEIN: Dramatically, Your Honor, I believe.

16 THE COURT: I hear you, but I don't know how to get
17 my arms around it, Mr. Eckstein. Let me throw out a thought
18 not in the nature of a ruling, which is, do you think it would
19 be productive for you to have a caucus with other parties-in-
20 interest over the lunch break to see if people are in a
21 position to make joint recommendations to me as to how we
22 should handle argument?

23 MR. ECKSTEIN: Sure, I'd be happy to, Your Honor.
24 And we can certainly consult.

25 THE COURT: Consulting is always easier than

1 agreeing, I will understand that, but the practical problem I
2 have that I would ask everybody in the room to consider is
3 that, given the company's liquidity and the July 10th date that
4 we have, certainly everybody understands my desire to use my
5 time as efficiently as possible and to allow as much time as I
6 can allow myself to give you guys a decision of the quality
7 that you all deserve. So what I need to do, and to ask you all
8 to do, is to figure out a way to balance the need to keep
9 things moving forward to avoid a lot of argument on matters
10 that could be resolved in the manner that you articulated, Mr.
11 Eckstein.

12 So my thought would be that when argument begins it
13 will be from the debtor with the chance for people with
14 different perspectives to respond and for the debtor to reply.
15 But so long as the debtor understands that if we go forward
16 it's going to be up at bat first, it seems to me that it's no
17 harm, no foul and maybe very sensible to have the kind of
18 dialogue we're talking about over the lunch break for you and
19 Mr. Miller to agree, and other folks like Mr. Richman and tort
20 litigants and AGs and the like, as to how we should do it.

21 A propos that, full stop, you, Mr. Eckstein, and the
22 two indentured trustees on your committee are in kind of a
23 hybrid capacity because you support the motion in some respects
24 and you have concerns about it in others.

25 MR. ECKSTEIN: That's correct, Your Honor.

1 THE COURT: I would like to get your views --
2 probably not fair to ask for them now, but probably after lunch
3 -- as to when and how you and the two indentured trustees
4 should be heard and whether you want to bifurcate your argument
5 or what. And when I said I would be hearing from the debtors,
6 I did not mean to exclude from argument opportunity folks who
7 generally agreed with the debtors, like the government, the
8 UAW, the larger bondholder group and anybody -- both the
9 Canadian government and anybody else who I might have
10 overlooked.

11 So what I'm of a mind -- I don't know if you're going
12 to be successful or not, Mr. Eckstein, but I think it couldn't
13 hurt to have that dialogue and that we propose that you have it
14 over the lunch hour.

15 MR. ECKSTEIN: We'll do that, Your Honor, and
16 obviously we'll include Treasury in that discussion because
17 they're a critical participant in these discussions. And it
18 may be that certain of the arguments will naturally carry over
19 to tomorrow morning in any event, and that may actually provide
20 the window to resolve some of the issues that are open and
21 hopefully can get closed. But I don't know whether that will
22 or will not get accomplished.

23 THE COURT: All right, well, given our track record,
24 I think it would take extraordinarily favorable circumstances
25 to finish all oral argument this afternoon or even this

1 evening. Mr. Miller?

2 MR. MILLER: Your Honor, a propos of that statement,
3 which I don't think is a subject for the luncheon conference,
4 is Your Honor going to set any time limits on oral argument?

5 THE COURT: That's a good point. Probably, I think,
6 I need to. And while I would not do it the way this circuit
7 does, or even the Supreme Court, we can limit a party to twenty
8 minutes or whatever it is before the yellow and red lights go
9 on. I think I would like recommendations, when we resume after
10 the lunch break, as to what would be fair for the various
11 objectors and what would be consistent with due process on the
12 one hand and not turning this into a circus on the other.

13 MR. MILLER: Yes, sir.

14 THE COURT: Okay. But I'm not going to decide it
15 this minute. I got to think about that one myself.

16 MR. MILLER: Thank you, Your Honor.

17 THE COURT: All right, thank you. Ms. Cordry, do you
18 want to rise before we break?

19 MR. CORDRY: I would just like to second Mr.
20 Eckstein's position because the Attorneys General, as you know,
21 had filed an omnibus objection and had quite a few issues on
22 the table. I think we're extremely close on virtually all of
23 them, except successor liability we have some real
24 determinations there. But it's been very difficult to close
25 the sale, if we can use an auto term there, on most of these,

1 at least in part, because everyone who needs to deal with those
2 issues has been very tied up in being in this hearing and so
3 forth. And we've been at a stage of almost-done for several
4 days now. So I think, in fact, if there was a clear period of
5 a few hours where both on their side and our side, everyone,
6 could sit down there, work through the pieces and make sure
7 that both Treasury and the GM side are okay with that, I think
8 we and, I think, some of the other folks would be able to
9 dramatically reduce the amount of our argument. So --

10 THE COURT: Well, fair enough. I can't obligate
11 anybody to agree with anything.

12 MR. CORDRY: Clearly not.

13 THE COURT: But it would help me do my job, just like
14 it would help Mr. Eckstein and you do yours, if I get my arms
15 around what has been resolved and what's still outstanding. In
16 fact, that was why I asked --

17 MR. CORDRY: Right.

18 THE COURT: -- you guys to give me those supplemental
19 sheets so I knew which issues you had which you perceived as
20 not being satisfactorily or fully addressed and those that are
21 now behind us. Am I right that you're allied with the brief I
22 got from the Nebraska AG --

23 MR. CORDRY: Yes, yes. I'm arguing that brief, yes.

24 THE COURT: -- that seventy-one page brief?

25 MR. CORDRY: Yes, and -- I'm sorry, and we did file

1 table of contents last night --

2 THE COURT: Well, you weren't -- you didn't sign the
3 brief, but I suspect you were a co-conspirator --

4 MR. CORDRY: Yes. Yes --

5 THE COURT: -- as part of that submission?

6 MR. CORDRY: I actually looked at the Local Rules and
7 I did not see the table of contents; we were very late on time.
8 It turns out it's in the case management order, which I had not
9 seen, and I deeply apologize, Your Honor.

10 THE COURT: All right, well, you understand why I
11 want to get your perception on TWA and compare it with theirs
12 and --

13 MR. CORDRY: Exactly.

14 THE COURT: -- all the others.

15 MR. MILLER: Exactly.

16 THE COURT: And, with agreement, those issues are
17 going to be narrowed. And what I need to -- I think they've
18 already been narrowed, but I need everybody's help on the
19 extent to which they remain.

20 MR. CORDRY: Right. I would note that the narrowing
21 is actually in some of the areas such as the dealer agreements,
22 the warranty provisions and those sort of things, some of which
23 are starting to come into being filed with the master purchase
24 agreement, some of which are in draft orders which have not
25 been filed yet, some environmental --

1 THE COURT: So you're talking about a narrowing of
2 two different types --

3 MR. CORDRY: Right.

4 THE COURT: -- their being narrow on some of your
5 dealer provisions where there may or may not have been
6 comparable progress on successor liability issues?

7 MR. CORDRY: Right. All of the issues, I say, apart
8 from successor liability, are very close to being done. But we
9 don't have everything done; we don't have it in filed orders.
10 We kind of -- until we see the actual written piece of paper,
11 we'll need those.

12 On the successor liability, we certainly -- I think
13 there's room -- if we actually sat down and talked some more to
14 Treasury, I think there's room that we could narrow that some
15 more. I've seen the draft order; it has some language there
16 that comes part of the way. We have not had any chance to
17 discuss that language with them to see where their thoughts are
18 on that.

19 THE COURT: All right, here's what I'd like to do,
20 not ordering, suggesting. If Mr. Miller and U.S. Attorney's
21 folks and Mr. Eckstein think that your attendance at their
22 lunchtime chat will be productive, maybe that would be a good
23 idea.

24 But I understand, Mr. Eckstein, you can't have the
25 kind of caucus you're talking about if it has thirty-five

1 objectors in the room. You're going to have to figure out
2 what's most appropriate in terms of how you think you can get
3 the dialogue that you think is constructive. I mean, I can see
4 that one extra person for dinner is no big deal. If you have
5 forty people coming into your living room, it can be a bigger
6 production.

7 MR. ECKSTEIN: Without getting too far into the
8 weeds, my sense is that we probably can break the issues out
9 into essentially what I would give the umbrella of the
10 successor liability-type issues, and then there are financial
11 issues. I believe the financial issues are the ones that, at
12 least based upon what we've heard so far, should be
13 susceptible, at least in the ideal world, to a resolution and
14 clarity. And I believe that it would be very constructive if
15 we can, if we can, to try to get those issues as resolved as
16 possible before launching into closing arguments.

17 I believe that the successor liability issues warrant
18 discussion, but the sense that I have at least is that we all
19 have -- we know what the positions are, and those will probably
20 have to be argued. Obviously, if there can be more movement
21 and clarity, I think that'd be great. But I think that, for
22 purposes of the closing arguments, at least my assumption is
23 that we're working off of the record that we have. And I think
24 that Your Honor is going to want to hear the legal arguments
25 associated with --

1 THE COURT: Right, and I would be surprised if
2 anything that was being done is going to alleviate Mr.
3 Richman's concerns, and probably Mr. Parker's as well.

4 MR. ECKSTEIN: I believe that's probably right, Your
5 Honor.

6 THE COURT: Nevertheless, the debtor will have the
7 first argument.

8 Mr. Richman, I don't know if you are rising or not or
9 merely to point out what I just recognized.

10 MR. RICHMAN: Just wanted to add my own two cents,
11 Your Honor, to try to be constructive. I don't mind admitting
12 that the influx of information that has come in over the last
13 two days has been rapid, and in some sense it's overwhelming.
14 We haven't yet been able to get transcripts from yesterday or
15 today. I did my best to take notes, particularly during Mr.
16 Wilson's deposition -- I mean, his testimony. He spoke very
17 fast; I wasn't able to get it all down. And when Your Honor
18 talks about limiting argument, I would submit, not just for
19 myself but, I think, generally for everybody, that with some
20 more time to organize notes and prepare to be able to refer to
21 particular testimony in support of particular legal arguments,
22 all of the arguments will be more streamlined and better
23 organized and shorter in length.

24 So my view, and particularly taking into account the
25 need of parties to confer to narrow issues, and in particular

1 our need to organize the arguments as in a streamlined and
2 effective a fashion as we can, is that we should commence
3 argument in the morning, take a break this afternoon, let
4 people have the discussions they want to have, let people
5 organize the way they need to and coordinate other issues and
6 presentations.

7 THE COURT: Mr. Miller, unless you're sure you know
8 what you want to do now, I was going to suggest you think about
9 that over the lunch break and let me know if you prefer to
10 start this, your argument, since you're the number one batter,
11 this afternoon, or whether or prefer to start tomorrow.

12 MR. MILLER: Your Honor, certainly will think about
13 it, but I would note, Your Honor, there is an urgency to the
14 situation. You have an enormous record before you. You have a
15 lot to do, as you said, to render a decision. Time is really
16 of the essence. Now, in terms of transcripts, there were
17 depositions all weekend. A lot of the testimony, Your Honor,
18 and, Your Honor, it was redundant, it was over and over. I
19 think the issues are very clearly drawn. If there can be a
20 resolution on -- some of these are narrow -- some of these
21 issues, that's fine. But I really believe, Your Honor, it's
22 important to move forward. There are a lot of things waiting
23 that have to happen in connection with this transaction, if it
24 is approved. And lots of physical, mechanical things have to
25 be done that will take time. And if this transaction's

1 approved, the faster this transaction is consummated, the
2 better the chances that that ten percent of stock that's going
3 to OldCo is going to have some real value. So time is of the
4 essence, Your Honor.

5 THE COURT: All right, well, let me know if that
6 remains your thinking after the lunch break.

7 MR. MILLER: Yes, sir.

8 THE COURT: Okay. Now, by my watch, a minute or two
9 before 2:00. We'll resume in an hour. We're in recess.

10 (Recess from 1:58 p.m. until 3:05 p.m.)

11 THE COURT: All right, everybody, have a seat,
12 please. Mr. Miller, Mr. Eckstein, is there any consensus on
13 approach? I'm going to ask Mr. Richman the same question.

14 MR. ECKSTEIN: Your Honor, I think I was reasonably
15 effective at herding as many cats as I could over the last
16 hour, and I think the consensus that we have is as follows. I
17 think people are prepared to go forward now.

18 THE COURT: Again?

19 MR. ECKSTEIN: People are prepared to go forward this
20 afternoon with the closing arguments. My understanding is that
21 the company is going to begin and parties in support are going
22 to argue. And I gather that -- it sounded to me like it was
23 probably under an hour and a half for the arguments on that
24 side. And to the extent I've been able to speak to the various
25 objectors, and I haven't spoken directly with each of them, by

1 my count, Mr. Richman is going to be speaking and I'm told that
2 they would like to reserve somewhere between thirty and forty-
3 five minutes. Mr. Bressler is going to be speaking and he
4 thinks he needs approximately fifteen minutes. I haven't had a
5 chance to speak directly to Mr. Jakubowski, but I'm assuming
6 that he will speak in addition to Mr. Bressler, and I assume
7 approximately ten minutes because that was going to be covered
8 together. Mr. Kennedy is going to speak, and he told me that
9 he needs approximately twenty minutes. Mr. Esserman and Mr.
10 Reinsel are going to speak, and they have told me they need
11 approximately twenty minutes; that's for the --

12 THE COURT: For the --

13 MR. ECKSTEIN: Those are the asbestos --

14 THE COURT: Oh. Okay. Oh, Esserman you said.

15 MR. ECKSTEIN: Yes.

16 THE COURT: Okay.

17 MR. ECKSTEIN: Mr. Esserman and Mr. Reinsel are both
18 going to both speak in support of the asbestos objections. The
19 Attorneys General, there are three objectors and they've told
20 me that they need between thirty and forty-five minutes
21 collectively. And I haven't had the opportunity to speak
22 directly to Mr. Parker; I'm assuming he's going to want to
23 speak as well, and I assumed approximately twenty minutes for
24 that as well. That looks to me like it's somewhere between two
25 and a half and three hours if you assume everybody takes the

1 allotted time that I mentioned. And I'd be prepared, Your
2 Honor, to describe where the committee is right now and where
3 things stand with respect to our discussions with U.S.
4 Treasury, which I think are productive. And I can do that
5 either now or I can do that when Your Honor is prepared to
6 shift to the merits.

7 THE COURT: Okay. Mr. Eckstein, were you
8 contemplating talking about the successor liability issues, or
9 are you going to leave that to the tort litigants and the AGs?

10 MR. ECKSTEIN: Your Honor, at present I think I'm
11 going to probably leave that to the individual objectors and
12 the AGs. We do have a call with our committee for this
13 afternoon at 4:30 which we'd like to have to update them
14 generally upon where a variety of issues are. And if there's
15 anything further that I need to say, I would ask Your Honor to
16 give us the opportunity after that call to do so, but I don't
17 think it will require Your Honor to interrupt the proceedings
18 for us to have some representatives of our firm out
19 participating in the call.

20 THE COURT: All right.

21 MR. ECKSTEIN: But I would like to speak on the other
22 aspect of our objection and how we believe that is being dealt
23 with based upon discussions we've had with the government.

24 THE COURT: Would you prefer to wait a little longer
25 before you speak to that, or were you looking for an early

1 opportunity to do that?

2 MR. ECKSTEIN: I'd probably do that early, Your
3 Honor, because I think we have a direction that is -- at least
4 as far as I can tell, works for the government, works for the
5 committee and I think is satisfactory at least to the
6 individual committee members who have an interest in the issue
7 and have heard where we are on that.

8 THE COURT: Would it be your preference to address it
9 before or after Mr. Miller and other movants speak?

10 MR. ECKSTEIN: Probably before, Your Honor.

11 THE COURT: Okay with you, Mr. Miller?

12 MR. MILLER: Okay with me.

13 MR. ECKSTEIN: I can --

14 THE COURT: Oh, wait, Mr. Bernstein, you rose your
15 hand -- raised your hand.

16 MR. BERNSTEIN: Mr. Eckstein omitted --

17 MR. ECKSTEIN: I'm sorry.

18 THE COURT: I'm sorry, Mr. Bernstein?

19 MR. BERNSTEIN: Mr. Eckstein omitted me from the
20 list. And, in addition, Your Honor specifically asked us to
21 address a particular legal issue in oral argument. I'm having
22 that researched right now and would very much prefer, if it's
23 possible, and oral arguments getting over till tomorrow, to
24 maybe have -- to address that issue in the morning rather than
25 this afternoon.

1 THE COURT: Well, I won't make you argue it today.
2 You can either do it tomorrow, or if we're somehow done with
3 everything today I'll take a -- you can just give me a letter
4 or a short memo.

5 MR. BERNSTEIN: That'd be fine, thank you, Your
6 Honor.

7 THE COURT: Okay. All right, go ahead, Mr. -- Mr.
8 Esserman?

9 MR. ESSERMAN: Very quickly, Your Honor.

10 THE COURT: Come to a microphone, please.

11 MR. ESSERMAN: Yes. Your Honor, I definitely --
12 Sandy Esserman, for the record. I definitely don't want to
13 slow the train down, but I do think it is a little unfair to
14 have to go into argument without understanding what kind of
15 order the debtor is seeking. And, as I understood it, that is
16 moving around and it could have issues on claims, capital C or
17 small C claims, that could have an effect on what we argue and
18 how we argue it. I wanted to raise that because it certainly
19 would be nice to know what they are seeking.

20 THE COURT: You know what the debtor's asking for
21 now, and you can only do better than that, right?

22 MR. ESSERMAN: I don't know. I hope so.

23 THE COURT: I would assume that the debtor's not
24 going to -- I have difficulty seeing how they could make it any
25 worse, from your perspective.

1 MR. ESSERMAN: I agree. But it would be nice to
2 know --

3 THE COURT: It seems to comport with your due process
4 needs and concerns. And if the debtor -- or the government,
5 more likely, makes a decision that some of the stuff that
6 bothered you you're not going to ask for, I assume that you
7 will either not complain and you will say I'm not complaining
8 about that portion but I'm complaining about the portion you
9 didn't take care of.

10 MR. ESSERMAN: Correct.

11 THE COURT: It sounds like it skins the cat, to me,
12 Mr. Esserman.

13 MR. ESSERMAN: Okay, thank you.

14 THE COURT: Okay. Mr. Richman.

15 MR. RICHMAN: Your Honor, my concern is a little
16 different. And, first, you've run a superb trial under
17 difficult conditions, incredibly speedy in the circumstances.
18 As I indicated before lunch, I feel that I have not had an
19 adequate opportunity, given the importance of the issues that I
20 want to be able to address as articulately as possible to this
21 Court, to effectively marshal all of the evidence that came in
22 at rapid speed and be in a position to respond to the arguments
23 for a large number of people who I think are relying on us to
24 articulate a position for them.

25 I don't believe that the difference between having

1 all of the closings today or tomorrow morning can credibly be
2 considered material, even if one accepts that July 10 is an
3 important date for the debtors. I don't think anybody could
4 have predicted that the testimony would have been over today
5 and the hearings might have gone over until tomorrow in any
6 event.

7 And so all I ask, with all due respect and no
8 criticism of the Court intended, is that I be given an
9 opportunity for additional preparation time so that I can
10 present a more effective argument with reference to the
11 evidence in the morning. I have no objection to other parties
12 wanting to start today if they feel ready and prepared to go
13 forward. I'm not trying to put anybody at disadvantage. I'm
14 also fine if the debtors would rather have it all done -- and
15 it sounds like it's about three hours in total. So three hours
16 in the morning to take care of argument and maybe have other
17 things cleaned up in the meantime still seems to me to be fair
18 to everybody, give due process to everybody. And so I would
19 respectfully ask that Your Honor consider that and consider a
20 recess until the morning.

21 THE COURT: I'm going to do a variant of that, Mr.
22 Richman, because I do believe in due process. And it's now a
23 quarter after 3. I'm going to make you second to last, and I'm
24 going to take all of the object -- or take the movants and all
25 of the other objectors today, except for Parker, Mr. Parker.

1 Mr. Parker's arguments are so duplicative of yours that I want
2 to hear them from you first. And then any that he wants to
3 make that you haven't satisfactorily addressed he can make. So
4 I'll hear everybody else, and you can have first thing in the
5 morning.

6 MR. RICHMAN: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. PARKER: Your Honor, thank you.

9 THE COURT: Okay. Mr. Miller, I guess we're ready
10 for your closing at this point. Just pause for a second.

11 MR. KAROTKIN: Not Eckstein?

12 THE COURT: Oh, yes. Forgive me, Mr. Eckstein.
13 Yeah, thank you, Mr. Karotkin. Let me just hear from Mr.
14 Eckstein.

15 MR. ECKSTEIN: Thank you, Your Honor. Just to tie a,
16 I guess, a ribbon around the issue that I've been referring to,
17 what I had suggested before the break, and I feel that it was
18 worth the effort, one of the significant issues that has
19 influenced the committee from the outset and remains an
20 important part of our view of this transaction is that the
21 business support for this transaction at the committee level,
22 and similarly before the case was commenced from the ad hoc
23 bondholders committee level, was the understanding that the
24 stock and the warrants that were being left with OldCo were
25 going to be available for distribution to unsecured creditors

1 and that U.S. Treasury was going to be providing DIP financing
2 on a limited recourse basis in an amount sufficient to fund the
3 wind-down and transition and administrative expenses of the
4 estate. And that originally had been estimated at being 950
5 million dollars. And as Your Honor has heard, there were
6 negotiations that were ongoing and discussions to ultimately
7 increase that amount based upon further estimates.

8 What I've been told based on discussions with
9 representatives of the U.S. Treasury is that they are highly
10 confident that those discussions will conclude now that Mr.
11 Wilson is off the stand and is able to refocus on the issue,
12 that those will conclude so that the parties are in a position
13 to come back to court, I'm told, by tomorrow morning and
14 represent to the Court and the parties what the increased
15 amount is going to be. And what we understand is that it's
16 going to be an amount that JayAlix (sic) is satisfied, in its
17 view, will be adequate to fund what they believe are reasonable
18 wind-down transition and administrative expenses.

19 UNIDENTIFIED SPEAKER: Not Jay.

20 MR. ECKSTEIN: AlixPartners? Thank you.

21 And I've been told that we should assume, for
22 purposes of how we proceed, that that is going to in fact take
23 place and that if for some reason it doesn't play out that way,
24 that the Treasury understands that all bets are off and parties
25 would have the right to continue to advance the arguments that

1 we had intended to advance in the first instance.

2 We would obviously prefer that matter to be resolved.
3 Similarly, there was an issue that was discussed earlier this
4 morning with respect to workers' compensation claims and where
5 those are going to reside. And we've been told that those --
6 that issue also has been resolved favorably for OldCo. Those
7 will continue to be obligations at NewCo, and we are told that
8 that issue has been resolved with the state so that we no
9 longer have to be concerned about a material modification in
10 the amount of unsecured liabilities moving from NewCo to OldCo.
11 And, similarly, I've been told by the Treasury that that issue,
12 if for some it does not get confirmed by tomorrow morning, then
13 parties will have an opportunity to come back and reopen that
14 issue.

15 So, based upon those representations, Your Honor, we
16 feel that that is quite productive. And we're prepared not to
17 argue further on that issue today and to give the Treasury and
18 AlixPartners the opportunity to finish that process and
19 hopefully come back and confirm tomorrow morning the business
20 resolution.

21 THE COURT: All right. Fair enough. I think we're
22 ready for you then, Mr. Miller.

23 MR. MILLER: Thank you, Your Honor. I was beginning to
24 feel I'd never get here. Good afternoon, Your Honor, on behalf
25 of the debtors. Your Honor, since the publication of the

1 notice of the hearing to consider the 363 transaction, and
2 starting with the middle of June 2009 and up through June 19,
3 2009, the bar date for filing of objections to the transaction,
4 and thereafter, more than 850 written objections to the sale
5 have been filed. Many of these objections relate primarily to
6 the portion of the motion dealing with Section 365 of the
7 Bankruptcy Code and the assumption and assignment of executory
8 contracts and unexpired leases of real property. Those
9 objections, Your Honor, are directed primarily to the cure
10 amounts that have been stated by General Motors. It's the
11 intention of the debtors to deal with those objections in
12 accordance with procedures that will enable the resolution of
13 the cure amount objections in an orderly process.

14 THE COURT: Pause, please. Is there anybody who
15 thinks that the mechanisms you proposed aren't fair? I mean I
16 understand why they want their needs and concerns taken care
17 of, but there aren't any real procedural objections, am I
18 correct?

19 MR. MILLER: Not that I'm aware of, Your Honor.

20 THE COURT: Okay.

21 MR. MILLER: Okay. There remain several hundred
22 other objections to the 363 transaction. In reviewing those
23 objections, Your Honor, certain salient facts resonate from all
24 of the objections.

25 One, no party suggests or indeed opposes the

1 consummation of a sale of the General Motors' assets.

2 Two, no party suggests or proposes an alternative
3 viable -- alternative viable to a sale of the General Motors'
4 assets.

5 Three, no party suggests or proposes a source of
6 alternative financing that would be sufficient to satisfy the
7 secured indebtedness of approximately fifty billion dollars
8 that would owed to the Treasury and the governments of Canada.

9 No person has come forward with or an expressed
10 interest to propose a higher or better offer for the assets
11 that are to be sold pursuant to the Section 363 transaction.

12 No person has come forward to contest the liquidation
13 analysis that has become part of the record made by Alix
14 Partners and Mr. Koch.

15 In addition, notwithstanding the huge media or
16 congressional attention to the claim plight of dealers,
17 virtually no GM dealers have objected to the 363 transaction.
18 And, in fact, approximately 99.6 percent of the dealers who
19 have been offered the opportunity to continue as GM dealers
20 have agreed to new ongoing participation agreements. And over
21 98 percent of the dealers who will be discontinued have
22 accepted wind down agreements.

23 THE COURT: What's the percentage again, please?

24 MR. MILLER: Ninety-eight percent of the
25 discontinued, Your Honor.

1 All of such agreements are to be assumed by the
2 purchaser. Various attorneys general and regulators, despite
3 the agreement of the dealers, do object to the application of
4 Section 363(f) to state franchise laws but not to the sale, per
5 se. The limited objection in deposited by the general unsecured
6 creditors' committee, which represents a constituency composed
7 of bondholders, unionized employees, dealers, suppliers, cloth
8 and asbestos claimants, there's a reflection of the common
9 theme of the objections.

10 The official committees' objection states that it is,
11 and I'm quoting, "Satisfied there is that no viable
12 alternative" and I'm inserting this, to the 363 transaction,
13 "exists to prevent the far worse harm that would flow from the
14 liquidation of GM." And, the "current transaction is the only
15 option on the table."

16 The official committee further states that the
17 Section -- that the 363 transaction, "serves the core purpose
18 of the bankruptcy code and constitutes a strong business
19 justification under Section 363 of the code to sell the
20 debtors' assets outside of the plan process."

21 Despite this universal appreciation of the fact that
22 the sale of the GM assets is in the best interest of all
23 economic stakeholders, we do have these hundreds of objections.
24 The essence of the objections soon becomes apparent.

25 First, the recurring demand of the objectors, "I want

1 more" or "Cut someone else out."

2 Second, "I don't like the process and with more time
3 I might be able to have more leverage and thus extract more
4 consideration."

5 The objectors fail to recognize that what we are
6 dealing with is an asset sale of fragile assets. To an
7 independent purchaser, that is their sole source of financing
8 and investment. They ignore the central characteristics of a
9 purchase and sale transaction. The purchaser makes the
10 decisions as to what it is willing to purchase and on what
11 terms it will purchase those assets and what it will pay and
12 what it will assume.

13 The desire for more is characteristic of creditors in
14 the world of bankruptcy. Such desire doesn't equate to a
15 legally cognizable objection. It doesn't mean that a
16 transaction is fatally or otherwise flawed or, indeed, that the
17 purchase price is unfair. While everybody empathizes with
18 everybody who is suffering because of what is happened to
19 General Motors both in the monetary, emotional or physical
20 sense, bankruptcy, in all its permutations, Your Honor, whether
21 Chapter 11 or Chapter 7 is a zero-sum game.

22 A 363 sale enables the establishment of the value of
23 the assets and leads to a determination of what the pie will be
24 and ultimately, in subsequent proceedings, who will share in
25 that pie. There can be no doubt that Section 363 empowers the

1 Court to consider and approve the sale proposed by the debtors.
2 As the Court has noted many times, one must start with the
3 words of the statute.

4 Section 363(b) is unambiguous. "The debtors after
5 notice and a hearing may sell property other than in the
6 ordinary course of business with the approval of the Court."
7 There is no prohibition contained in Section 363 or any other
8 provisions of the bankruptcy code that prohibits a Section 363
9 transaction. The Section 363 interpretive cases fortify the
10 plain meaning of the statute and establish the determinative
11 criteria that a Court should look to to exercise its decisional
12 power.

13 The Lionel case in this circuit and its progeny,
14 including the TWA case in the Third Circuit and the scores of
15 cases that this Court and other courts have ruled on in
16 connection with the application of Section 363(b) sales,
17 particularly in the last two years, likewise establish beyond
18 any doubt the power of the Court to authorize a sale of
19 substantially all of the assets of a debtor pursuant to Section
20 363. The Lionel line of cases stand for the principle that if
21 there is an articulated business justification for the sale of
22 the assets by the debtor, the sale should be approved. The
23 reasonable exercise of business judgment on the part of the
24 sale proponent, the debtor, and the good faith of the purchaser
25 establish the basis for the approval of a Section 363 sale.

1 In the case of GM, Your Honor, the record that has
2 been made over the last day and a half is replete with
3 articulated business reasons which justify the approval of a
4 363 transaction. The case in favor of GM's decision is even
5 more precedent as the assets that are being sold are so prone
6 to substantial deterioration and loss of value. And there is
7 no alternative to the sale without substantial prejudice and
8 detriment to all economic stakeholders.

9 No party in interest disputes the need to preserve
10 the going concern value over GM assets. The only way to save
11 that value is through the approval of a 363 transaction. The
12 alternative, as clearly set forth by Mr. Henderson, a chief
13 executive officer of GM, and confirmed by Mr. Wilson, on behalf
14 of the Treasury, is liquidation.

15 Implementation of the Section 3 -- of the 363
16 transaction is the only way to begin the process of stopping
17 recurring losses that have been incurred by the debtors and to
18 reshape and reinvigorate the transfer of assets to form the new
19 GM. There is no other option that is available to the debtors
20 and their economic stakeholders.

21 The F&B bond holder's assert, Your Honor, that this
22 is not the right process to follow but rather a Chapter 11 plan
23 process should be affected and in some magical way there will
24 be an accelerated Chapter 11 plan that possibly could be
25 confirmed in ninety days. Yet there is nothing in the record,

1 Your Honor, to substantiate that contention. And the major
2 premise upon which the F&B bondholders are relying upon, as it
3 developed in today's testimony, was that the UAW employees
4 would be bound under the amended collective bargaining
5 agreement that was ratified in May of 2009 and, therefore,
6 would have to perform services even if the sale is not
7 approved. The testimony of David Curson, just before the
8 luncheon break, established unequivocally that if UAW retirees
9 settlement is not approved, all the modifications of the
10 amended collective bargaining agreement are withdrawn and GM is
11 put back into the same position that it was before those
12 amendments with labor rates, work conditions, etcetera, which
13 were unsatisfactory in the operation of a business,
14 unsatisfactory to the Treasury. So saying that the 363 process
15 is not the right process without more is just a conclusion.
16 And doesn't take into account what would happen in a Chapter 11
17 case. We have seen in these proceedings, Your Honor, how many
18 objections have come forward. I wouldn't call it a Tower of
19 Babel but we were pretty close, I think.

20 Your Honor has enough experience in Chapter 11 cases
21 to know that things go awry. And this morning when I was
22 examining Mr. Wilson I referred to the Delphi case. And in the
23 Delphi case, Your Honor, there was a sale. There was a
24 proponent for a sale. And because of what occurred in the
25 Delphi case, the proponent backed out of the sale. And in a

1 case that was filed in October in 2005 in which it was
2 represented at the first day hearings that that case would be
3 over in sixteen months, we are now approaching the fourth
4 anniversary of that case. And what has happened to that case,
5 Your Honor? At one point in time, the plan of reorganization
6 was contemplating close to a hundred percent distribution to
7 creditors -- general unsecured creditors. The current state of
8 that case is that the debtor-in-possession financing is
9 undersecured. And that the --

10 THE COURT: The DIP is undersecured?

11 MR. MILLER: -- undersecured, Your Honor -- that
12 there aren't sufficient funds to pay the debtor-in-possession
13 financing in full.

14 In effect, Your Honor, the estate is administratively
15 insolvent. And GM is very actively involved in that estate,
16 Your Honor, because Delphi is a major supplier of parts. If
17 you transpose that, Your Honor, to a Chapter 11 case for
18 General Motors, Delphi did not have the problem of worrying
19 about consumers. All Delphi had to worry about was
20 suppliers -- I mean raw material suppliers.

21 THE COURT: Pause here. To what extent, if any, was
22 any of the stuff you said about the Delphi case not
23 ascertainable for me reading the documents?

24 MR. MILLER: It's all ascertainable from reading the
25 documents in the case Your Honor.

1 THE COURT: All right. And anywhere in putting any
2 embellishment on it, all of those facts are set forth by me
3 just looking at pleadings?

4 MR. MILLER: Yes, sir.

5 THE COURT: All right. Continue.

6 MR. MILLER: I was about say, Your Honor, Delphi was
7 dealing with an industry providing raw materials, etcetera. GM
8 is dependant upon consumers; hundreds of thousands of
9 consumers. A GM in bankruptcy will always give rise to the
10 issue of is it going to be a successful bankruptcy? Will these
11 vehicles that are being produced have resale value? Will they
12 be serviced? The President can talk about warranties, but
13 somebody has to service those warranties. And if GM is not
14 there to service those warranties, how do they get serviced?

15 This is a different situation, Your Honor, than the
16 situation which Delphi faced in just convincing its suppliers
17 to keep going along with it. Here you have a consumer
18 community, which as we pointed out previously, Your Honor, the
19 purchase of an automobile is a major expenditure for a
20 consumer. The consumer is looking for reliability, a good
21 product, resale value and a future that in reliance upon the
22 reliability of the manufacturer. That will disappear, Your
23 Honor. Any kind of an extended Chapter 11 case.

24 Beyond that, Your Honor, I think it was Mr. Richman
25 who was examining Mr. Repko this morning for substantially less

1 than forty-five minutes in which he made an assumption about
2 financing during this accelerated somehow Chapter 11 case. The
3 record is absolutely clear; there is not other source of
4 financing for this company. As the record also demonstrates,
5 this company is losing money every month.

6 As Mr. Parker so eloquently pointed out, Your Honor,
7 there's a negative stockholders' equity that is almost fifty
8 percent -- I'm sorry, the liabilities exceed the assets on book
9 values by over a hundred percent. And the market value today,
10 obviously, has gone down substantially.

11 In this economy, with a credit crunch that has been
12 pervasive since September of 2008, who is going to finance a
13 continuing Chapter 11 debtor called General Motors? In a
14 malage, Your Honor, that would have to take out the treasury.
15 The treasury would have to be primed or taken out. And as Mr.
16 Repko said in his direct -- in his declaration, which is his
17 direct testimony, there was no debtor-in-possession financing
18 available in anything close to the amount that would be
19 necessary to continue the operations of GM.

20 So the alternative of suddenly converting this into
21 an ordinary Chapter 11 or an accelerated Chapter 11, whatever
22 you wish to call it, is not an alternative. And we have the
23 testimony of Mr. Wilson that if the sale approval, or whatever,
24 is not entered on June 10th the treasury is not going to go
25 ahead and continue financing and will call the loan.

1 What does that mean? That means, Your Honor, we then
2 have to revert to Mr. Koch's liquidation analysis. And when
3 Your Honor looks at that exhibit that Mr. Koch testified to,
4 the recoveries, the general unsecured creditors, is zero. And
5 as Mr. Wilson testified, even the U.S. Treasury claims will be
6 impaired. So in the context of what we're talking about where
7 the only alternative is liquidation, these are exactly the
8 circumstances in which Section 363 comes into play. That's why
9 it's in the statute, that's why it's been recognized by
10 bankruptcy courts, over and over again starting from pre-code
11 law when the issue was are the assets in some danger; are they
12 burdensome? When the code was adopted in 1978, it brought
13 forward those principles but on the basis of business judgment.
14 You no longer had to establish that the assets were
15 deteriorating. It was an exercise of business judgment.

16 And again, Your Honor, what this record demonstrates
17 beyond any doubt whatsoever, is that General Motors considered
18 its alternatives. It considered various alternatives and it
19 came to the conclusion the exercise of reasonable business
20 judgment, after a lot of study and a lot of paper produced,
21 that the best alternative to preserve the going concern value
22 of these assets was the consummation of a Section 363
23 transaction provided that the United States Treasury, which was
24 its largest secured creditor, was willing to go along with it
25 and would finance the new GM. And that's what happened, Your

1 Honor.

2 And as Mr. Wilson testified, those negotiations were
3 frustrating, difficult and strenuous. And they occurred over a
4 period of time. Mr. Wilson is an extremely adroit negotiator.
5 And fortunately, for the creditors, Your Honor, when you look
6 at the purchase price for these assets and you look at, if Your
7 Honor recalls, the testimony of Mr. Worth yesterday and the
8 exhibits to which he referred to, the net purchase price,
9 assuming the value of the equity, which is going to be issued
10 is as Mr. Worth testified, is approximately ninety-plus billion
11 dollars. I venture to say, Your Honor, there is no one else in
12 the world who would pay ninety billion dollars for these
13 assets. And maybe it's a great compliment for the bargaining
14 acumen of the GM team that they were able to get that
15 bargaining -- that purchase price. So the concept that there's
16 some sort of a Chapter 11 process that's going to work here,
17 just isn't true, Your Honor. It's not going to happen.

18 363 sales are consistent with the concept of allowing
19 the market to establish the value of assets as directed by the
20 Supreme Court in 203 North LaSalle Street, a case in 1999 at
21 526 U.S. 434. In these cases despite, as I said the extreme
22 notoriety of GM's distress and the thirty-day period that was
23 provided for under the sales procedure order, no party, not one
24 party desired to conduct due diligence for the purpose of
25 proposing a different or other offer for the assets of General

1 Motors.

2 The purchaser in this case is the treasury sponsored
3 vehicle, now New GM Co. or NGMCO, Inc. The treasury is a
4 holder of the prepetition secured obligation of the debtors in
5 the amount of 19.4 billion dollars. Since the onset of these
6 Chapter 11 cases, pursuant to the June 25 order, another 33.3
7 billion dollars in the IP financing has been provided. And as
8 Mr. Wilson testified, that amount will be drawn before the
9 consummation of this transaction.

10 Under the terms of the 363 transaction, I could read
11 into the record but I'm not going to do it, Your Honor, in the
12 interest of time, a description of the purchase price. Maybe I
13 should do that, sir. In the --

14 THE COURT: I mean I have read the purchase --

15 MR. MILLER: And I will not do it, Your Honor.

16 THE COURT: Is there a particular part that you
17 wanted to bring to my attention?

18 MR. MILLER: No, Your Honor. I was just taking it
19 out of the MSPA -- the MPA --

20 THE COURT: All right. Go ahead, explain it.

21 MR. MILLER: Okay.

22 "The consideration for the purchase -- of the
23 purchase assets will be:

24 A) A bankruptcy code Section 363 credit bid in the
25 amount equal to; 1) The amount of indebtedness owed by the

1 parent and its subsidiaries as of the closing as defined below.

2 Pursuant to the existing sponsor credit facilities
3 and 2) The amount of indebtedness of parent and its
4 subsidiaries as of the closing under the debtor-in-possession
5 credit facility, the DIP facility, less 8,022,488,605 dollars
6 which is going to be assumed by New GM as part of the exit
7 financing. Plus,

8 B) The return of the warrant issued by parent, that's
9 GM, to sponsor in consideration of the secured indebtedness
10 owed by parent to sponsor under the existing sponsor credit
11 facilities. Plus,

12 C) The issuance by purchaser to parent of 50,000 --
13 I'm sorry, 50 million shares of common stock of purchaser (the
14 parent shares) and warrants to acquire 90,909,090 shares of
15 common stock of purchaser ("parent warrants"), plus

16 D) The assumption by purchaser of the assumed
17 liabilities."

18 All of that, according to Mr. Worth's testimony, adds
19 up to a net purchase price of in excess of 90 billion dollars.
20 There is no comparable offer. Nothing even close to it, Your
21 Honor, for the assets that are to be sold and transferred.

22 The purchaser has added an increment, obviously, to
23 the purchase price in the interest of serving national
24 interest. "No other entity can compete with the purchase price
25 that has been offered by the purchaser."

1 In considering the 363 sale and referring to the
2 Lionel case, Your Honor, the factors that are cited in that
3 case, the Second Circuit noted that one of the more important
4 factors, or maybe the most important factors is whether the
5 assets are deteriorating. And in this case, Your Honor, that
6 is a fact.

7 There has been testimony about the June sales and the
8 June sales were better than the downside projection. But
9 yesterday, Mr. Henderson testified, taking into account
10 everything the month was a terrible month. It was thirty
11 percent less than the same period in 2008. And also, as Mr.
12 Henderson testified, fleet sales, which are a very important
13 component on the sales of General Motors, had substantially
14 decreased because of the uncertainty in the minds of fleet
15 owners. That uncertainty, Your Honor, could only appreciate
16 and grow in the event that this sale is not consummated and
17 there is some effort to continue this Chapter 11 process. But
18 that's not even in the cards because the treasury has said,
19 there will be no financing. And that, I am sure, Your Honor,
20 will be in newspapers and blogs tomorrow. And when dealers --
21 I'm sorry, excuse me, Your Honor, not dealers -- fleet owners
22 and even consumers read what has transpired here, the level of
23 uncertainty will go even higher. And then the potential for
24 revenue perishability, loss of market share will be right in
25 the front of this company and will severely damage its value.

1 Now, in breaking down the objections, Your Honor, the
2 way I look at them, there are essentially four categories.

3 The first is that the 363 transaction constitutes a
4 sub rosa plan.

5 The second, the sale results in unfair treatment of
6 hourly retiree employees and perhaps others.

7 Three, the conditions of the sale violates state
8 franchise law as relating to dealers.

9 Four, the scope of Section 363(f) as it relates to
10 successor liability issues.

11 The objections, Your Honor, from our perspective, as
12 you might anticipate, are without merit and should be
13 overruled.

14 The 363 transaction in no way constitutes a sub rosa
15 plan. There is no provision in the 363 transaction or relating
16 to the 363 transaction that prescribes the treatment of
17 creditor claims in the liquidating Chapter 11 cases. The
18 portion of the purchase price consisting of shares of common
19 stock in the warrants of a purchaser will constitute the
20 debtors' estate for eventual disposition in a plan of
21 liquidation to be negotiated with the debtors' allowed claim
22 holders. How that portion of the purchase price will be
23 allocated to holders of allowed claims in the Chapter 11 cases
24 is in no way dictated by the Section 363 transaction.

25 The Section 363 transaction does not contravene the

1 holding of the Braniff case. It is consistent with the Lionel
2 line of cases and the recent decision in the Chrysler case.
3 The precise arguments made by the objectors here were made in
4 Chrysler. That Fiat -- the Fiat sale was a sub rosa plan.
5 Judge Gonzalez, in his decision of May 31, soundly rejected
6 that argument. It must be assumed that the United States Court
7 of Appeals for the Second Circuit, in affirming Judge
8 Gonzalez's decision, likewise, found the sub rosa argument
9 without merit.

10 The 363 transaction is no more and no less than a
11 sale of assets for the best possible price available and with
12 no other conditions imposed on the debtors as to the
13 disposition of the consideration received by the debtors. Some
14 objectors assert that the UAW, the collective bargaining agent
15 and the UAW VEBA, will represent over sixty thousand employees
16 of the debtors are receiving a high recovery on its Chapter 11
17 plan than others and therefore not only is the Section 363
18 transaction unfair, but it rises to a sub rosa plan.

19 As the testimony demonstrates, Your Honor, without
20 any contravention, the recovery by the UAW retirees' claim is
21 coming directly from the purchaser and not from the debtors.
22 It is a transaction that was negotiated by the US Treasury
23 directly with the UAW. And why was it negotiated? It was
24 negotiated because the purchaser, like any purchaser in a 363
25 transaction who is buying the assets that conduct the business,

1 needs to have the wherewithal to conduct that business.

2 There are sixty thousand UAW employees who operate
3 these plants. Without those employees, there is no business.
4 And if there is no business there is no going concern value.
5 So in order to protect its investment, the purchaser had to
6 reach an arrangement, an agreement with the UAW and that is an
7 arrangement between the U.S. Treasury and the UAW. And part of
8 that arrangement, Your Honor, is that the UAW is releasing its
9 claim against the debtors' assets. That claim, Your Honor, is
10 in excess of twenty million dollars. Not quite as big as the
11 bondholders, but pretty damn close; which would certainly
12 dilute any recovery that bondholders might make as long as that
13 claim was there in the Chapter 11 cases. So there is a benefit
14 from what the U.S. Treasury has negotiated with the UAW.

15 THE COURT: Mr. Miller, am I right or off base if I
16 looked at the UAW's willingness to proceed with New GM under
17 more pro management terms as consideration for New GM?

18 MR. MILLER: Yes, Your Honor; intangible but more
19 consideration.

20 THE COURT: Okay.

21 MR. MILLER: My view, Your Honor, the concessions
22 that were made -- if I can go back a minute, if Your Honor may
23 recall in Mr. Wilson's testimony -- I'm sorry, Mr. Curson's
24 testimony, Mr. Curson said, "The union was advised that as far
25 as the treasury was concerned in connection with the bridge

1 loans that were made commencing on December 31, 2008 and into
2 2009, the treasury had made it perfectly clear that the cost of
3 operations of GM had to be reduced and that included the cost
4 of unionized hourly employees. And those concessions were made
5 in the context of allowing GM to survive to get to the point
6 where there can now be a New GM which has these modified
7 terms -- and this is not unusual, Your Honor, 363 buyers come
8 in in companies that have been unionized and are able to
9 negotiate new concessions in appropriate cases. This case is
10 extremely complicated because of the size of the case the size
11 of the financing needed. But in my view, Your Honor, it
12 certainly is a concession.

13 THE COURT: So strictly speaking, the new collective
14 bargaining agreement was entered into with the existing GM and
15 wouldn't last for as long as Old GM and the principal
16 beneficiary of accommodations being made with the New GM?

17 MR. MILLER: The structure of the transaction, Your
18 Honor, if the new agreement was negotiated with the debtor on
19 the premise that it would be assumed and assigned to New GM.

20 THE COURT: Assumed and assigned in its modified
21 form?

22 MR. MILLER: That's correct, Your Honor. Subject to
23 the consummation of this transaction. As Mr. Curson said, "If
24 the transaction is not approved, all of those concessions are
25 withdrawn." The ratification of that new agreement is no

1 longer effective.

2 It's a well established rule, Your Honor, that in
3 connection with 363 sales, the purchaser may elect, in its
4 discretion, what liabilities should be assumed and what
5 arrangements the purchaser may make with the employees of the
6 debtor. This was clearly evidenced, Your Honor, in a case in
7 this district in the Maxwell Publications Chapter 11 cases in
8 connection with the sale of the Daily News to Mortimer
9 Zuckerman, in which Mr. Zuckerman made direct agreements with
10 the various unions involved in the Daily News case. The
11 unhappiness, Your Honor, of retired hourly employees, who are
12 both distressed and envious of the status of the UAW
13 represented employees, is unfortunate.

14 However, Your Honor, as your testimony and the record
15 indicates, essentially, there are no active employees who are
16 represented by the IUE. And from the perspective of the
17 purchaser, as Mr. Wilson testified, the purchaser, the U.S.
18 Treasury and the government was looking to the creation of a
19 viable entity on the other end of this transaction. And
20 viability of a business entity very much depends on its capital
21 structure and its cost base. So the determination was made by
22 the U.S. Treasury that essentially the principle that it was
23 operating on was what expenses should be assumed that are
24 necessary to make NewCo, or New GM, a viable company?

25 If everybody here could do it, Your Honor, on this

1 side, they would move all liabilities to New GM. And we have
2 another company that maybe overleveraged. And in particular,
3 Your Honor, the IUE, as testimony demonstrates, continuation of
4 the hourly retiree health and medical benefits is not an
5 insignificant fund. It's over 300 million dollars a year. And
6 unfortunately, Your Honor, the way the world is, those
7 employees, or retirees, I should say, are not contributing any
8 benefits to the New GM. And the increase of that liability may
9 affect the ongoing business of New GM. Right now, Your Honor,
10 the seasonally adjusted annual rate of sales of vehicles in the
11 North American market is approximately 9.95 million to 10
12 million vehicles a year. At that rate, Your Honor, no OEM is
13 making any money. And so when, Your Honor, when you read the
14 reports, its not only GM and Chrysler and Ford that are losing
15 money, but the giants like Toyota, Honda, etcetera.

16 At 9.5 million units, over 10 million units, GM is
17 not at a breakeven point. So this entity that's going forth,
18 this New GM, has a challenge before it. It has to materially
19 increase sales. It has to lower its cost of operation. It
20 cannot afford to take on unnecessary expenses. And that's the
21 underlying guiding principle that resulted in the IUE hourly
22 retirees being left behind. But being left behind, Your Honor,
23 did not leave them with nothing.

24 There was a process to try and deal with the issue.
25 And that process, as the record demonstrates, was to give them

1 the same benefits, and it's for all the splinter unions Your
2 Honor, as GM was offering to its retired salaried employees.
3 Now, granted they are reduced benefits, but they are benefits
4 just the same, Your Honor. Mr. Kennedy pointed out that in
5 connection with the salaried retirees there was also an
6 increase in the pension at the same time that reductions were
7 made in the past year by increasing the pensions by 300 dollars
8 per month. Well, that did not come out of a hide of GM, Your
9 Honor. That came out of the pension fund. An overfunded
10 pension fund that hadn't increased benefits for a long period
11 of time, according to Mr. Henderson's testimony. The --

12 THE COURT: Pause, please. Let me make sure I'm
13 keeping up with you.

14 MR. MILLER: Yes.

15 THE COURT: The 300 bucks a month that were given to
16 the salaried --

17 MR. MILLER: Retirees.

18 THE COURT: -- retirees, which I gather they could
19 use either for paying for supplemental health coverage or for
20 putting in their pockets, came out of the qualified pension
21 trust as contrasted to GM?

22 MR. MILLER: That's correct, Your Honor.

23 THE COURT: All right.

24 MR. MILLER: And so, it did not affect the cash flow
25 of the operating company.

1 So it's unfortunate, as I said, Your Honor, that
2 there is harm and frustration and damages as a result of what's
3 happened to GM. The fact that the retired hourly employees
4 believe that the UAW has been favored, is not a substantive
5 legal objection to the 363 transaction. There sole complaint
6 is a claim with insufficient benefits to them.

7 In the most recent filing by the IUE, which I think
8 was made the day -- Monday, perhaps, it's asserted that the 363
9 transaction was structured as part of a conscious and
10 deliberate conspiracy to deprive IUE hourly retirees of their
11 health and medical benefits. The IUE claims that the 363
12 transaction was structured to circumvent the provisions of
13 Section 1114 of the bankruptcy code.

14 The surreply, if I can refer to it as that, fails to
15 take cognizance of the fact that from the purchaser's
16 perspective, there are no benefits to the New GM as the IUE
17 represents no active employees. In total disregard of the
18 economics and the intention to have a viable, successful,
19 economically viable New GM that will enhance the value of the
20 shares of stock that will be held by Old GM, the IUE casually
21 asserts that the purchaser must assume the IUE health and
22 medical benefits obligations. I believe, Your Honor, the cases
23 are legend. That the bankruptcy court cannot direct a
24 purchaser as to what obligations it will assume or pay. These
25 are obligations that run into the millions of dollars per

1 month.

2 The IUE also asserts that the 360 transactions are
3 simply unfair because more could have been taken from other
4 entities, such as executives. It doesn't note that executives
5 previously took sharp and significant reductions over the years
6 while reductions could not be taken in respect of the splinter
7 unions because those benefits were subject to collective
8 bargaining agreements.

9 The fact that the purchaser has voluntarily
10 contracted to provide benefits to UAW employees is self-
11 evident, they are a necessity to operate the business and
12 enhance the assets. That doesn't give IUE and the other
13 splinter objectors a legally sufficient objection to the 363
14 transaction. And I would point out to Your Honor that certain
15 other small splinter unions have agreed to the proposal that GM
16 has made to equate hourly's with salaried retirees and have
17 NewCo assume that obligation.

18 It is an unfortunate economic circumstance but not
19 the result of any conspiracy. The 363 transaction offers the
20 IUE retirees and other splinter union retirees an opportunity
21 to receive benefits and recoveries that will be lost if the 363
22 transaction is not approved.

23 The liquidation analysis demonstrates, and it is
24 unchallenged, Your Honor, that there will be no recoveries to
25 IUE retirees and all unsecured creditors. A result that should

1 not be allowed simply to seek the envy of IUE retirees, vis a
2 vis UAW represented employees and retirees.

3 IUE also points out that salaried employees in
4 connection with a reduction in their health and medical
5 benefits -- I've spoken to that already, given the cost, Your
6 Honor, of the IUE health and medical benefits plan, its
7 axiomatic that during the course of the pending Chapter 11
8 cases and probably sooner than later the debtors will move to
9 reject the IUE retirees' health and medical plans as Mr. Koch
10 testified.

11 Just one minute, Your Honor.

12 Hourly employees will stand pari passu with salaried
13 retirees as to health and medical benefits. The number of IUE
14 retirees is the largest and most significant group of hourly
15 employees who have not accepted the proposal. That, in and of
16 itself, Your Honor, is unfortunate, but as I said does not
17 create an impediment to the approval of a 363 transaction.

18 The record is now clear, Your Honor, that the U.S.
19 Treasury will not go forward with continued financing absent
20 approval of the -- of a sale and the collective bargaining
21 agreement with the UAW will fall apart, as Mr. Salzberg
22 established this morning through Mr. Curson.

23 In connection, Your Honor, with Section 363 sales and
24 successor liabilities in this circuit, it has been consistent
25 that Section 363 sales have been approved as free and clear of

1 all claims, encumbrances, interests, etcetera, and successor
2 liabilities pursuant to Sections 363(f) and 105 of the
3 bankruptcy code. Various parties have objected to the scope of
4 the requested relief. The same issues came up in the Chrysler
5 case and in Judge Gonzalez's decision in relation to the
6 rejection of dealer contracts that was decided on June 19, 2009
7 and Judge Gonzalez again denied the same objections that have
8 been raised in connection with this 363 transaction.

9 Protection against successor liabilities is a
10 standard provision and appropriate in respect of Section 363
11 sales. Moreover, since the filing of the objections and a
12 connection with product liability claims, the MPA has been
13 revised so the purchaser, as established by the record, will
14 assume all express warranty claims and all product liability
15 claims that arise subsequent to the closing of the 363
16 transaction, irrespective of when the vehicle purchased. And
17 as Your Honor questioned yesterday in connection with the
18 indemnification agreements, mostly the GM dealers are
19 indemnified in connection with product liability claims. So
20 eventually, they leach up to General Motors. And I --

21 THE COURT: The guys that you're terminating, the
22 dealers who are underneath the termination agreements with the
23 "soft landing" so to speak, if one of those terminated dealers
24 gets sued by somebody injured, do you still have massive
25 indemnification?

1 MR. MILLER: I don't know the answer to that
2 question, Your Honor.

3 UNIDENTIFIED SPEAKER: Yes.

4 MR. MILLER: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. MILLER: And, Your Honor, I would just -- one
7 minute -- the situation we have before the Court today, Your
8 Honor, is a situation in which the choices are between
9 approving a sale and from the debtors' perspective liquidating
10 this company. And I think in that context, facts and
11 circumstances, Your Honor, I believe that the decision in the
12 Third Circuit, in the TWA case, is right on point. And the
13 Third Circuit said, "Given the strong likelihood of a
14 liquidation, absent the asset sale to American", that's
15 American Airlines, "a fact which appellants do not dispute, we
16 agree with the bankruptcy court that a sale of the assets of
17 TWA at the expense of preserving successor liability claims was
18 necessary in order to preserve 20,000 jobs including those of
19 certain named individuals and to provide funding for employee-
20 related liabilities including certain retiree benefits."

21 Now, in the case before Your Honor, it's not 20,000
22 employees, there are over 90,000 employees in the North
23 American operations and globally for GM, it's over 200,000
24 employees. The consequence of liquidation to those employees
25 will be horrific.

1 In respect of the asbestos claims, Your Honor, that's
2 an issue for OldCo. This is not an asbestos driven case as
3 Your Honor's previously noted. And 1114 is not applicable to
4 the purchaser.

5 THE COURT: I think you mean 524(g).

6 MR. MILLER: Oh, I'm sorry; 524(g).

7 THE COURT: But I have a question on that. The
8 proposed order in the last form I saw it, and I understand it's
9 being looked over again and may be amended, but I think it has
10 an injunction in it. It actually has the words "are enjoined
11 from proceeding with asbestos claims". Does that walk and
12 quack a little bit like a 524(g) --

13 MR. MILLER: No, Your Honor.

14 THE COURT: -- or the entity that's being protected
15 is the purchaser of NewCo rather than the insurance company?

16 MR. MILLER: I don't believe so, Your Honor, because
17 it's not only a question of the assertion of the claim. When
18 claims are asserted you have to defend against them. That
19 costs money. That takes time and effort. Here, what we're
20 trying to do is effectuate a sale where a purchaser will
21 acquire these assets, work these assets and not be subjected to
22 lawsuits. And it's different in the other cases, Your Honor,
23 because OldCo will still be there. And OldCo will have to
24 decide how to deal with these asbestos claims, including
25 perhaps, Your Honor, the future claims. In connection with the

1 motion that was made to appoint a committee -- an additional
2 committee of asbestos claimants, Your Honor denied that motion
3 without prejudice pending further developments that may occur
4 in connection with the administration of that estate. And
5 there are various alternatives that can be adopted in the
6 administration of the liquidating Chapter 11 case that it's
7 going to be a negotiated plan of liquidation. There could be a
8 fund created to deal with the future claims so that's set aside
9 and as future claims arise, they will have a resource to go to.
10 But that's an issue for the old company. What we have is a
11 purchaser who's laid down some conditions that are certainly
12 within the power and jurisdiction of this Court consistent with
13 the TWA decision, consistent with Lite Motor; this is within
14 the power of the Court. And I believe, Your Honor, that the
15 injunction is necessary because without in any way being
16 disrespectful, asbestos claimants know how to pursue litigation
17 whether it's with merit or without merit. And that's expensive
18 litigation.

19 THE COURT: Talk about the similarities and
20 differences between what you're asking for and -- in the way of
21 asbestos protection and what was given by Judge Gonzalez and
22 affirmed by the Circuit in Chrysler?

23 MR. MILLER: As I understood the Chrysler decision,
24 Your Honor, I will defer to anybody else who -- it is the
25 equivalent of -- first, it's free and clear of all claims and

1 encumbrances and I believe there's an injunction in that order.

2 THE COURT: I guess the best evidence of that is
3 whatever Judge Gonzalez entered?

4 MR. MILLER: Yes, Your Honor.

5 And so, Your Honor, we would submit that the
6 successor liability issues are simply not issues that should
7 deter this Court from exercising its approval of this 363
8 transaction because it complies with Section 363 for all the
9 reasons stated in Lionel and it's the progeny of Lionel.

10 The dealer issues, Your Honor, which came to the
11 forefront soon after the commencement of the Chapter 11 cases
12 and relate to the reconfiguration and the dealer relationships
13 certainly created a tempest in a teapot. GM, in contrast to
14 what occurred in Chrysler, carefully and meticulously undertook
15 to work with its dealers to efficiently downsize the dealer
16 network. Rather than rejecting the dealer contracts under
17 Section 365, GM undertook to agree on mutually satisfactory
18 arrangements that would alleviate the costs and effects of
19 termination and changes. As the dealers who GM has proposed to
20 continue receive participation agreements with proposed
21 amendments to the dealer agreements that were explained to such
22 dealers, as I said before, the overwhelming acceptance, 99.6,
23 that is a tremendous statement of the position of the dealers
24 that they want to continue, they want to support a new GM.

25 As I said with respect to the proposed discontinuing

1 with dealers, over ninety-eight percent accepted the wind down
2 agreements. And those wind down agreements, Your Honor,
3 provide for some financial support for these discontinued
4 dealers. It's giving them an opportunity of twelve or more
5 months to liquidate their inventories with support from New GM.
6 These agreements are being assumed by New GM.

7 The ultimate objective of the dealer program is to
8 reduce the total number of GM dealers from approximately 5900
9 dealers to approximately 3500 to 3600. Over 900 discontinued
10 dealers filed appeals for review. What GM did, Your Honor, is
11 it set up a process that even after giving a notice of
12 discontinuance, if that's the appropriate term, the dealer had
13 an opportunity to object to the discontinuance and enter into
14 an appeal process. Nine hundred discontinued dealers did file
15 appeals and currently over sixty decisions have been reversed.

16 As a general proposition, the dealer community is
17 relatively satisfied with the approach taken by GM.
18 Unfortunately, various state's attorney general and regulators
19 contend that the participation agreements are violative of
20 state franchise laws and therefore impermissible. Again, the
21 Chrysler case is instructive. The same arguments were
22 presented to Judge Gonzalez. In his decision of June 9, 2009,
23 in connection with the rejection of dealer contracts, which is
24 cited at 2009 LEXIS 1382, Judge Gonzalez ruled that "Under the
25 supremacy clause of the United States constitution, state

1 franchise laws, which do not concern public safety or health
2 and welfare but are rather economic in orientation, were
3 subject to the overarching jurisdiction of the bankruptcy court
4 to the extent necessary to implement the objectives and
5 policies of the bankruptcy code." And these state statutes,
6 Your Honor, are clearly economic in orientation.

7 THE COURT: The distinction you are making was
8 between regulatory provisions that are regulating their health
9 and safety or the public health and welfare? Did I hear you
10 right?

11 MR. MILLER: Yes, Your Honor.

12 THE COURT: And the contrast fee and those that are
13 essentially economic in nature?

14 MR. MILLER: That's correct, Your Honor.

15 THE COURT: All right. Continue.

16 MR. MILLER: The arguments which I presented Your
17 Honor, apply with equal force to the arguments which have been
18 made by the consumer victims committee. The arguments to which
19 have been made on behalf of the five product liability
20 claimants represented with my -- Mr. Jakubowski. And then,
21 Your Honor, it likewise applies to the other objections, I
22 think Mr. Parker was making an objection along those lines
23 also. But Mr. Parker's primary objective, Your Honor, as I
24 understand it anyway, is that GM in some mystical way violated
25 its obligations under certain indentures and granted liens

1 and --

2 THE COURT: Under the equitable and ratable clause
3 that it contends exists?

4 MR. MILLER: Yes, Your Honor. The fact of the
5 matter, Your Honor, no lien or security interest was granted to
6 the United States Treasury in violation of any of those
7 indentures. And --

8 THE COURT: They're equal in ratable salary?

9 MR. MILLER: Equal in ratables, sir.

10 Section 406 of the indenture that Mr. Parker referred
11 to states, and I'm going to paraphrase, Your Honor, GM is not
12 going to put any liens on any principle domestic manufacturing
13 property of GM or any manufacturing subsidiary or upon any
14 shares of stock or indebtedness --

15 THE COURT: Except excluded assets?

16 MR. MILLER: I'm sorry, Judge?

17 THE COURT: Except excluded assets?

18 MR. MILLER: These are the excluded assets, Your
19 Honor.

20 THE COURT: Okay. So the issue is do we have a
21 definition of excluded assets?

22 MR. MILLER: It's put in the record, Your Honor. And
23 it is the principle domestic manufacturing properties and
24 manufacturing subsidiaries -- the shares of manufacturing
25 subsidiaries. Those are excluded Your Honor.

1 THE COURT: Okay.

2 MR. MILLER: And in January 7, 2009, GM issued an 8-
3 K, and it said on the 8-K that the "The seller is secured by
4 substantially all of GM's and the guarantors U.S. assets that
5 were not previously encumbered including their equity interest
6 in most of the domestic subsidiaries and their intellectual
7 property that real estate, other than their manufacturing
8 plants or facilities". And in Section 401 of the loan and
9 security interests, it states, Your Honor, it is -- that's
10 where the definition of excluded assets come from and it
11 states, "Excludes a lien on any property that gives rise to an
12 obligation to grant a lien to another party, such as the
13 bondholders". And it states --

14 THE COURT: All right. So you're saying that if it
15 would have triggered the equal and ratable clause it was listed
16 amongst the excluded assets and, therefore, when the deal was
17 structured it was an intentional effort to avoid triggering the
18 equal and ratable clause?

19 MR. MILLER: Absolutely, Your Honor.

20 THE COURT: Go ahead, Mr. Miller.

21 MR. MILLER: And beyond that, Your Honor, Mr.
22 Henderson testified that there was no violation of the
23 indentures. There was nothing in the record. Mr. Parker has
24 not produced any notification or record of the filing of any
25 liens against the excluded properties. So this record is clean

1 that are no such liens.

2 Mr. Parker --

3 THE COURT: So you --

4 MR. MILLER: Sorry.

5 THE COURT: So you're saying the debtors didn't
6 purport to subject the critical property to a security
7 interest. In fact, evidenced the intention to avoid it. And
8 apart from that, didn't throw a mortgage or a UCC lien on the
9 affected property.

10 MR. MILLER: That's correct, Your Honor. I might
11 even point out there's actually a provision that if by accident
12 a lien had been granted it would be invalidated because it
13 violated the indenture.

14 Mr. Parker also makes an argument, Your Honor, for
15 recharacterization over equitable subordination of the
16 treasury's claim, including I think what he's saying some
17 concept of deepening insolvency, there is nothing in the
18 record, Your Honor, that in any way would establish the grounds
19 for equitable subordination or recharacterization and should
20 not be --

21 THE COURT: Forgive me, Mr. Miller, before you get
22 too far, can you give me the cites to the definition of
23 excluded assets and of the section of the financing agreement.
24 I think we're talking about the December LFA, December 2008, on
25 that granted a lien but also was a carve out previously --

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: -- well, could one of your guys do that?

3 MR. MILLER: Could I furnish that to Your Honor by
4 this afternoon?

5 THE COURT: Yes, I just need to be able to read it
6 for myself.

7 MR. MILLER: Yes, sir.

8 THE COURT: To second-guess you in that regard.

9 MR. MILLER: Your Honor, the --

10 THE COURT: With you and Mr. Parker.

11 MR. MILLER: Yes, sir. And, Your Honor, in
12 connection with the infamous 62,700 dollars, an unfortunate
13 incident. Your Honor asked the question as to what would be
14 the status of claiming of that 62,700 dollars? I would refer
15 Your Honor to the case of Doe v. Pataki, 481 F.3d --

16 THE COURT: George Patki?

17 MR. MILLER: Pataki, a former governor.

18 THE COURT: My classmate?

19 MR. MILLER: I didn't know that, Your Honor. You're
20 a fortunate man indeed.

21 THE COURT: Go on. Doe versus Pataki.

22 MR. MILLER: 481 F.3d 69 and 75-76, a Second Circuit
23 decision in 2007.

24 THE COURT: What was the jump cite?

25 MR. MILLER: I'm sorry, sir?

1 THE COURT: The page cite.

2 MR. MILLER: 75-76.

3 THE COURT: Okay.

4 MR. MILLER: And I'm quoting, Your Honor, "The basic
5 principles governing interpretation of consent decrees and
6 their underlying stipulations are well-known. Such decrees
7 reflect a contract between the parties (as well as a judicial
8 pronouncement) and ordinary rules of contract are generally
9 applicable", citing United States v. ITT Continental Baking
10 Co., at 420 U.S. 223, 236-37 (1975), see Crumpton v. Bridgeport
11 Education Associates, 993 F.2d, 1023,1028 (2d Cir. 1993). In
12 the face of the holding in that case, Your Honor, we would
13 conclude that, unfortunately, that the 62,700 dollars is a
14 contract claim.

15 THE COURT: A contract claim and, therefore, it's
16 just like all the other contract claims that you can only take
17 for the remaining unsecured community?

18 MR. MILLER: Exactly, Your Honor.

19 Your Honor, the arguments that have been made, and
20 which are not supported by the record, that disapproving the
21 363 transaction would be a benefit for bondholders, in
22 particular, and maybe the consumer victims make the same
23 argument. But, Your Honor, the economics that are before the
24 Court don't change if this transaction is not approved. They
25 just get worse.

1 GM is in a losing position now. Continuation of this
2 case in Chapter 11 will lead inevitably to a liquidation. A
3 liquidation which will have systemic results, Your Honor.
4 There is a whole community of suppliers that rely upon GM that
5 have been acknowledged by the federal government to be in the
6 danger zone if this company should be liquidated. There are
7 hundreds of thousands of jobs in the supplier industry that
8 would be affected and would deepen whatever the economic
9 crisis -- whether you want to call our economic crisis a
10 recession or a depression, but it would deepen that crisis to
11 the detriment not only of the economic stakeholders in this
12 case but to the nation as a whole. And in all of the
13 circumstances that have been presented, again, I have to say
14 Your Honor, there is no alternative. It is liquidation or this
15 sale and liquidation is draconian.

16 So we submit, Your Honor, that the 363 transaction
17 complies with the applicable principles of law. The debtors
18 have amply justified the exercise of their reasonable business
19 judgment and have articulated the rationale for their judgment.
20 There is no realistic alternative to preserve the going concern
21 value of the business and the assets to be sold. In support of
22 the motion the debtors have filed all of the declarations and
23 exhibits that support this transaction. The testimony of Mr.
24 Worth is not challenged as to the values here by any other
25 financial expert. The testimony of Mr. Repko is not challenged

1 in any way as to the lack of financing. The testimony of Mr.
2 Henderson, including his declaration, sets forth at length and
3 in detail the considerations that went into the commencement of
4 this 363 transaction. The considerations that the company went
5 through in the negotiations with the U.S. Treasury --

6 THE COURT: Pause, Mr. Miller.

7 MR. MILLER: I'm pausing.

8 THE COURT: Back to fairness opinion, if there aren't
9 any competing bidders or any alternatives to liquidation, how
10 important is it that anybody trying if the consideration is as
11 much as Worth thought, I would think that if the secured
12 lenders pushes the credit bid and as long as it's more than the
13 liquidation analysis and if that bid is the only game in town,
14 does it matter if the liqui -- if the fairness opinion was
15 right or not?

16 MR. MILLER: I'm going to give you my view, Your
17 Honor before everybody jumps up in the back from the investment
18 banking community and jumps on me.

19 THE COURT: You going to tell me that they give a lot
20 of money for something they didn't need?

21 MR. MILLER: No, Your Honor. We're dealing with one
22 of America's largest corporations. We're dealing with a
23 company which has a public board of directors. Almost all the
24 directors, with the exception of Mr. Henderson, are independent
25 directors.

1 THE COURT: And he'd like to be protected against
2 claims of breach of fiduciary duty and due care and the like?

3 MR. MILLER: Exactly, Your Honor.

4 THE COURT: I assume they had -- do they have their
5 own counsel?

6 MR. MILLER: Yes, Your Honor. The board of direct --
7 the independent members of the board of directors are
8 represented by Cravath, Swain & Moore.

9 THE COURT: All right. And to the extent that you
10 are relying beyond a good business reason that the ordinary
11 stuff we look at on any ordinary business judgment test getting
12 a fairness opinion goes a long way to helping and business
13 judgment?

14 MR. MILLER: Exactly, Your Honor.

15 THE COURT: All right. Continue.

16 MR. MILLER: So, Your Honor, we conclude that this
17 transaction is in the best interest of these debtors. Is in
18 the best interest of every economic stakeholder and benefits
19 the general unsecured creditor body. Because without this
20 transaction, there is no recovery for general unsecured
21 creditors and it may be a very valuable recovery. I mean a
22 large recovery, Your Honor. As Mr. Wilson testified this
23 morning, it's the intention of the treasury to try and
24 facilitate an initial public offering as early as 2010, which
25 will provide liquidity to these shares of stock. And there is

1 downside protection that was granted in the context of the
2 warrants that are part of the deal that was made between the
3 treasury and the bondholders. A deal that was negotiated
4 directly with the treasury and a voluntary contribution by the
5 U.S. Treasury to provide more consideration.

6 So, Your Honor, this is a classic 363. I don't think
7 I can recall a case that demanded the necessity for
8 consummation to avoid what would be horrific consequences for
9 all of the parties involved and all of the communities in which
10 this company does business and all of the communities in which
11 its suppliers do business. So we ask Your Honor to approve the
12 transaction. Thank you very much.

13 THE COURT: Does the government, Mr. Jones or Mr.
14 Schwartz want to be --

15 MR. JONES: Yes, Your Honor.

16 THE COURT: Before you get up, Mr. Jones, how long do
17 you think you're going to be? If you're going to be more than
18 ten minutes, I wouldn't mind taking a break.

19 MR. JONES: Your Honor, I expect to be less than
20 that.

21 THE COURT: Okay. Let's do it.

22 MR. JONES: May it please the Court, David Jones,
23 Assistant U.S. Attorney for the Southern District of New York.

24 The United States joins and strongly supports the 363
25 motion before the Court. As we've stated throughout the case,

1 the United States has committed enormous public resources to
2 achieve the swift certain creation of a commercially sound new
3 General Motors. The evidence is overwhelming and
4 uncontradicted. The only feasible way to achieve that goal is
5 through the 363 motion before the Court today and the
6 transaction confers enormous value on the estate that will
7 remain to be administered through the bankruptcy process.

8 This transaction more than meets with the
9 requirements of Section 363. The evidence is abundantly clear
10 that it was negotiated intensively and at arm's length. It is
11 far and away the highest and best offer achieved through sales
12 approval -- sales procedures that this Court has previously
13 approved and, indeed, no other offer has come in. The
14 transaction far exceeds the estate's liquidation value and the
15 record is also undisputed that liquidation, which would be
16 calamitous and a freefall situation, is the only alternative to
17 this sale.

18 As the evidence also has made clear, time is
19 absolutely of the essence as New GM's commercial viability
20 requires rapid completion of the sale. We have unambiguous
21 testimony during the hearing that the government conditions its
22 funding on a prompt sale order. That has been a condition of
23 the government's lending throughout. And we heard during the
24 hearing that it remains a condition of the government's
25 willingness to participate.

1 The government acted based on its sound and
2 independent business judgment that it cannot and will not risk
3 public dollars on the slower and less certain process and that
4 the 363 transaction contemplated is both legally appropriate
5 and necessary.

6 Your Honor, there's been -- has been or may be some
7 question or allegation the government has not acted in good
8 faith. But to the contrary, the government has exhibited
9 paramount good faith at every aspect in its -- in every aspect
10 of its dealings with General Motors. There's no evidence of
11 collusion or improper conduct to undermine the bonafides of
12 this sale. Indeed the government was motivated first by acting
13 as a prudent lender and then in connection with the 363
14 transaction as a purchaser, as Mr. Wilson repeatedly testified,
15 motivated simply by the goals of serving it's commercial
16 necessity as it moved into a phase where it would be operating
17 the new GM.

18 Your Honor, I won't dwell on the objections. My
19 remarks would be just duplicative of Mr. Miller's in which I
20 join. But no one has seriously called any of what I've just
21 said as to the fundamental merits of the transaction into
22 doubt. And there is no basis to call those assertions into
23 doubt. We do join in Weil's analysis of why each and every
24 objection lacks merit. And for these reasons, we join General
25 Motors and urge the prompt approval of the 363 motion. Thank

1 you, Your Honor.

2 Oh, I'm sorry, Your Honor, I have one more narrow
3 comment to say which is in response or in elaboration to some
4 questions directed to Mr. Miller regarding the Chrysler sale
5 order, in case it may be helpful.

6 THE COURT: Yes, thank you.

7 MR. JONES: The 363 order in Chrysler, which was
8 entered on June 1st, and I apologize I don't have extra copies,
9 but I think --

10 THE COURT: I think I can find it on ECA.

11 MR. JONES: -- yes, it's obviously available --
12 defines the claims that are being -- that the property of the
13 debtor was delivered free and clear of on pages 2 and 3 of the
14 document, that's where the defined term is located. In turn,
15 that paragraph 9 on page 26 of the order, the order provides
16 that the assets are transferred free and clear of claims as
17 defined earlier in the document at pages 2 and 3. And Mr.
18 Miller finally was correct that the order includes injunction
19 language. That's located in paragraph 12 of the order at pages
20 28 and 29.

21 So, Your Honor, the broad principles I've just
22 enunciated and we strongly support the motion, and I do note
23 that the remarks I just made and the particulars of the
24 Chrysler sale order make clear that what's being done today is
25 perhaps unprecedented in economic scope in some respects, but

1 precedented and fully supportable as a matter of bankruptcy
2 law. Thank you.

3 THE COURT: All right, thank you. Who else is --
4 Canadian government?

5 MR. SCHEIN: Yes --

6 THE COURT: All right. Canada and Ontario. Mr.
7 Schein, come on up, please.

8 MR. SCHEIN: Good afternoon, Your Honor. Michael
9 Schein for Export Development Canada on behalf of the
10 governments of Canada and Ontario and as the DIP lender and a
11 contemplated equity owner of New GM. Your Honor, Canada has
12 and continues to support the prompt emergence of GM and the
13 sale transaction before this Court. Canada believes the
14 arguments made by the debtors and supported by U.S. Treasury,
15 in respect of the consummation of this sale, both is supported
16 by the record before this court as well as applicable law.
17 Moreover, Your Honor, timely closing of this transaction is
18 important to Canada and marks a historic restructuring and the
19 alternative, Your Honor, liquidation, is in no one's interest
20 including Canada.

21 According, Your Honor, we respectfully request that
22 the Court approve the sale transaction and overrule all of the
23 objections for the reasons set forth by debtor's counsel.
24 Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Schein. UAW want to be

1 heard? It'll be you, Mr. Bromley, or Ms. Ceccotti?

2 MR. BROMLEY: Actually, Your Honor, if I could ask
3 your indulgence, it would be both of us for a reason I'll
4 explain.

5 THE COURT: Sure. Sure.

6 MR. BROMLEY: Just to start, the UAW is obviously
7 very supportive of this transaction representing over 500,000
8 Americans who are concerned about the rapid emergence of
9 General Motor. The UAW has spent a lot of time, several years
10 indeed, working with all of the major automobile companies in
11 the United States to guarantee their continued viability.

12 THE COURT: The 500,000 you're talking about talking
13 is more than the number who work for GM in North America but
14 includes the suppliers who would be adversely affected by --

15 MR. BROMLEY: Well there are 61,000 -- I'm sorry, Your
16 Honor.

17 THE COURT: No. Go ahead.

18 MR. BROMLEY: There are 61,000 active UAW members, as
19 well as 475,000 retirees.

20 THE COURT: I see, okay. Continue, please.

21 MR. BROMLEY: And in connection with all the work
22 that has been done over the past several years, the UAW entered
23 into the VEBA arrangements several years ago. And in the fall
24 of 2008, stood by, side by side, in the person of President Ron
25 Gettelfinger with the chairman and CEO of each of Ford,

1 Chrysler, and GM, when they appeared before congress looking
2 for assistance. And as Mr. Curson testified, the UAW
3 negotiated two complete collective bargaining agreements, one
4 prior to the February deadline, and another prior to the May
5 deadline, in order to help facilitate the rehabilitation, not
6 only of General Motors but of Chrysler as well.

7 And we stood before Judge Gonzales less than a month
8 ago, urging his indulgence and the approval of the deal
9 relating to Chrysler and we stand here again today asking the
10 same from you, Your Honor. Mr. Curson's declaration in his
11 testimony made clear that the collective bargaining agreement
12 amendments were needed and required by the U.S. Treasury, and
13 that those amendments are part and parcel of the deal with the
14 VEBA. Indeed, without one there would not be the other. And
15 were the deal not to go forward on the consolidated basis, that
16 the modifications to the collective bargaining agreement would
17 not be honored and be in effect.

18 So, Your Honor, we believe that the arguments that
19 have been made with respect to the UAW being advantaged here,
20 did not take into account the issues that Mr. Miller raised,
21 and indeed, the issues that Mr. Wilson raised, which are that
22 there are certain commercially necessary liabilities that the
23 new company needs, and those liabilities relate to a workforce
24 that can come in and bring this company back up onto its feet
25 very quickly. And without the VEBA, and without the amendments

1 to the collective bargaining agreement, it would be impossible
2 to do so. Indeed it's a condition to the DIP, and it's part
3 and parcel of the master sale and purchase agreement.

4 So for these reasons, Your Honor, we certainly urge
5 that the deal be approved. We also reserve any rights to
6 respond to any comments that are made by the objectors in
7 connection with the UAW. With respect to Ms. Ceccotti, there's
8 also a list of objections that have been raised by individual
9 retirees, because part of the motion is the approval of the UAW
10 retiree settlement agreement. And so it's with respect to
11 those specific retiree objections that Ms. Ceccotti would
12 approach the Court.

13 THE COURT: Sure. Ms. Ceccotti come on up, please.

14 MS. COCCOTTI: Good afternoon, Your Honor, Babette
15 Ceccotti, Cohen, Weiss & Simon, LLP, co-counsel to the UAW, and
16 as Mr. Bromley indicated, we submitted two filings in support
17 of the sale transaction. The first response dealing with the
18 matters that Mr. Bromley referred to, and in addition, we
19 submitted a supplemental statement in support of the
20 transaction specifically directed to approval of the UAW, the
21 document that is known in the various documents in this
22 proceeding as the UAW retiree settlement. Here we have
23 specifically addressed responses in individual letters that
24 have been submitted by UAW retirees expressing their objection
25 to approval of the retiree settlement agreement.

1 In case it hasn't been mentioned before, I should
2 point out that the UAW retiree settlement agreement is an
3 exhibit, it's Exhibit D to the MSPA, which I believe is in
4 evidence as Exhibit 6A. The supplemental response is at docket
5 number 2631 and Mr. Curson's declaration is also submitted in
6 support of our supplemental statement, I should note. Out of
7 approximately half a million retirees and others -- and here
8 I'll just pause to explain a little bit more about the numbers,
9 since your Honor raised the question a moment ago.

10 The number of roughly 475,000, we think it's probably
11 closer to half a million at this point, that refers to
12 retirees, surviving spouses and dependents. So -- all of whom
13 we consider "UAW represented retirees" when we talk about
14 retiree health benefits and the group for whom UAW serves as
15 the 1114 representative in the bankruptcy context. So we
16 have -- in discussing the settlement we basically, roughly use
17 the figure a half a million. I'm going to reference in a
18 moment a joinder to our statement in support of approval that
19 was filed by class representatives in the Henry 1 and Henry 2
20 litigations that you'll note that they are using a number of --

21 THE COURT: Pause, please.

22 MS. COCCOTTI: Yes, they're --

23 THE COURT: The number between 475,000 and 500,000
24 that's all folks who either they or their spouses had once
25 worked for GM?

1 MS. COCCOTTI: Correct. Yes. And they, for
2 example --

3 THE COURT: Compare and contrast it to other big
4 three manufacturers or supplier companies.

5 MS. COCCOTTI: This is strictly GM only. I should
6 say GM only, in addition there are some Delphi retirees; Delphi
7 was once part of GM and now going to be returning to default,
8 so with those two groups, Your Honor. So out of this, let's
9 call it half a million, retirees and others, the UAW was able
10 to indentify fifty-six individuals whose letters indicated or
11 could be read to indicate or state an objection to the approval
12 of the retiree settlement agreement. We compiled those
13 letters -- we did two things actually, Judge. We submitted to
14 your chambers copies of the letters in this format. If you
15 don't have that I'm happy to hand you up another one, just for
16 convenience, we pulled them straight off the docket so that you
17 could read them.

18 THE COURT: I think your gathering them up is helpful
19 so if you can hand it up at some point, that would be useful.

20 MS. COCCOTTI: I will do that, Judge. We also have a
21 chart at the back of our supplemental statement that, again,
22 lists these individuals and just attempts to characterize the
23 nature of their objection as best as can be determined.
24 Perhaps, not surprisingly, most of those who have written
25 letters have focused on changes in the plan of benefits that

1 will go into effect almost immediately upon approval of the
2 retiree settlement agreement, if it's approved by this court.
3 Individuals understandably concerned and unhappy about the loss
4 of dental benefits, vision, and the like.

5 There were some other objections as well, we had
6 several retirees who objected based on the fact that under the
7 UAW's governing constitution, they do not vote in the
8 ratification process that Mr. Curson described to us this
9 afternoon. There were some scattered other objections, some
10 concerned about pension benefits, some which were just sort of
11 blanket "I object," "I object to the GM bankruptcy," "I object
12 to sort of everything about the process." And as we stated in
13 our papers, the courts have generally found that where we have
14 such generalized objections, they don't help the court in
15 determining how to deal with them, and in general they're not
16 considered beyond that.

17 With respect to the others, we have said in our
18 papers that, in essence, the types of objection having to do
19 with changes in benefits and reductions in benefits are
20 objections that the courts, in dealing not only with the Henry
21 1 and Henry 2 settlements have addressed, but also courts in
22 similar -- in addressing similar settlements involving retiree
23 health, particularly where retiree health obligations shift, as
24 they did in GM, from the employer to an independent VEBA. And
25 what these courts have said and which we think is right on

1 target here as well, is that while the benefit reductions are
2 regrettable, the alternative to this transaction and the
3 alternative to approval of the retiree health settlement is as
4 Mr. Miller described and therefore placing the benefits that
5 those retirees enjoy today at great risk. So that while the
6 reductions may be regrettable, over all the settlements --
7 settlement, we believe, should be considered fair, reasonable,
8 and adequate, vis a vis the retiree class and vis a vis these
9 retirees on that basis and should be approved, notwithstanding
10 their objections.

11 I did note, and I would like to note again, the
12 joinder of the class representatives in the class actions,
13 Henry 1 and Henry 2, their joinder is at docket 2636 and they
14 are supportive, as well, of approval of the retiree settlement
15 agreement, in essence having joined our supplemental statement.
16 With that, your Honor, I would be prepared to rest on our
17 papers unless the court has other questions.

18 THE COURT: No, I don't.

19 MS. COCCOTTI: Okay. In that case, your Honor, I
20 will hand you up the individual objections.

21 THE COURT: Thank you. Is there anyone -- any other
22 folks who want to speak for the motion? I see no response.
23 We'll take ten minutes and then we'll take the first objector.
24 I said Mr. Richman would be able to start tomorrow so who will
25 be the first person to speak under those circumstances.

1 MR. BRESSLER: We'll be happy to start, Your Honor.

2 THE COURT: Okay, Mr. Bressler. See you after the
3 break. Thank you. We're in recess.

4 (Recess)

5 THE COURT: All right, Mr. Bressler.

6 MR. BRESSLER: Thank you, Your Honor. Barry Bressler
7 from Schnader, Harrison, Segal & Lewis, for the Ad Hoc
8 Committee of Consumer Victims of General Motors. As Mr.
9 Richmond noted, I hope Your Honor will give me some indulgence.
10 We'd be a little better prepared if it was tomorrow having
11 heard half the evidence today but we appreciate the
12 opportunity. I represent a fragile financial and physical
13 constituency. I know Your Honor appreciated it yesterday;
14 there were some of our clients in the courtroom, coming from
15 all over the country. These are folks who have suffered
16 accidents, and if deprived of the opportunity for full redress,
17 will lose the chance to recover from medical benefits, will
18 lose the chance to replace their lost wages and will lose their
19 chance to recover for pain and suffering and will be thrown
20 into the unsecured creditors' pool.

21 I heard Mr. Henderson say that he's concerned about
22 the humane treatments of the GM employees and I would hope that
23 someone, either the Treasury or GM would also be equally
24 concerned about the humane treatment of GM customers and
25 product tort liability claimants. I will try and address

1 myself, Your Honor, to our first two objections and I will
2 leave the argument over the 363 sale to the Attorney's General
3 and to other counsel who have addressed it in their papers.

4 Mr. Miller has told us that this is a routine 363
5 sale case but I think I just heard the Attorney General say
6 that this is an extraordinary case and I believe it's an
7 extraordinary case. I think it's an extraordinary case because
8 the purchaser, the debtor in possession financier, and the
9 prepetition lender are all, in this case, the federal
10 government. I'm not sure that that's ever happened before and
11 I'm not sure in a regular commercial case that Your Honor might
12 not have a different reaction if the prepetition lender, the
13 DIP lender and the largest shareholder of the purchaser was all
14 the same entity.

15 We do commend the Treasury for agreeing to assume
16 future product liability tort claimants. And we do agree that
17 that will help the reputation and the ability of New GM to sell
18 cars. We have not heard anything that convinces us that not
19 assuming current product liability claimants will not hurt the
20 ability of New GM cars. And whether the assumption was because
21 of the commercial reasons that were articulated or because this
22 was a politically sensitive issue or because of comments made
23 by the Second Circuit in Chrysler doesn't matter. It is
24 commendable that the future tort claimants are being assumed.
25 But here, the standards are not necessarily being met for a 363

1 sale. And unfortunately I am in the position of saying to Your
2 Honor under those circumstances, I would hope that you would
3 turn down the sale motion with some indication that if the
4 successor liability issues were addressed in a different way
5 that the sale might go through.

6 Let me briefly address some of the reasons. First of
7 all, this is not the Chrysler case. There is no independent
8 buyer. We were beaten to death in Chrysler with Fiat as an
9 independent buyer, putting in a new technology that's going to
10 teach Chrysler to build smaller, more fuel efficient vehicles.
11 That's what the government said. That's what the purchaser
12 said. Here, we have GM, which as I understand the testimony
13 will sell the same vehicles; Cadillac, Chevrolets, Buick and
14 GMC brand vehicles. They will have largely the same
15 executives, will have largely the same workforce which they
16 made an arrangement with the union for -- we'll talk about that
17 later -- which will use most of the same plants, which will
18 have the same dealer network. That doesn't sound to me like a
19 totally independent buyer. I also do believe that Mr. Wilson
20 is a very --

21 THE COURT: Mr. Bressler's, to what extent would be
22 Fiat era Chrysler stop selling Jeep Cherokees and all of the
23 other types of vehicles for which we now think of Chrysler.

24 MR. BRESSLER: And I would say that I made the
25 argument in Chrysler that it was not an independent buyer and

1 was rebuffed and I understand Judge Gonzales' decision. But I
2 think that Fiat made it clear that over the course of two
3 years, they were going to switch around the technology and that
4 they couldn't immediately stop selling the other vehicles and
5 wouldn't stop selling the other vehicles but that they were
6 going to introduce a smaller Fiat model as soon as possible and
7 that the consideration that they were putting in the
8 transaction was no cash but technology valued, depending on
9 which point you looked at it, at between ten and thirty billion
10 dollars for small car platforms, small car engines, small car
11 power trains that they thought Chrysler lacked and they would
12 turn it over a period of time. They also had new management
13 that they thought could run the company better and they brought
14 in independent management that came over. And the new
15 president was going to be a gentleman who was with Fiat and was
16 coming in to run the company. That is not the same here.

17 THE COURT: Before you get too far, because I didn't
18 want to interrupt you for a side but I'm afraid you're going to
19 lose the train of thought. You made reference in your earlier
20 remarks about comments made by the Second Circuit. The only --
21 I mean I have obtained and read the transcript of the argument
22 of the Second Circuit, and insofar as I'm aware, the only thing
23 that's formally issued for the Second Circuit yet, is something
24 that says in substance, we affirm for substantially the reasons
25 of -- stated by the Bankruptcy Court.

1 MR. BRESSLER: That is correct, Your Honor.

2 THE COURT: Okay. What was it in the comments made
3 by the Second --

4 MR. BRESSLER: There was a comment --

5 THE COURT: -- that you were referring to?

6 MR. BRESSLER: I apologize. There was comment made
7 by one of the judges. I think it largely went to the futures,
8 that would a State Court really enforce the order of a
9 Bankruptcy Court as to an accident that didn't happen for which
10 there was no notice, that was going to happen several years
11 after the sale transaction was confirmed.

12 THE COURT: I hear you. But at least seemingly, that
13 would apply only to an unmanifested asbestos claim or a tort
14 claim of the type for which your folks have now gotten the
15 debtors consensual movement.

16 MR. BRESSLER: That is correct, Your Honor. And that
17 was my point. That whatever the reason for moving over there,
18 I commend that movement. I'm not sure which of the three
19 reasons it was.

20 THE COURT: All right. Continue, please.

21 MR. BRESSLER: Thank you, Your Honor. The proposed
22 transaction, while called an asset sale transaction, looks very
23 much like a debt-for-equity exchange and the US Treasury
24 currently owns one hundred percent of the New GM entity. Not
25 withstanding Mr. Wilson's negotiating skills, I think it's

1 probably easier for him to negotiate with a company where the
2 executive officers are all going to be working for him, within
3 a very short period of time, if the transaction is approved.

4 Mr. Henderson testified, and Mr. Wilson for the
5 Treasury, that it was the UAW VEBA receiving a percentage
6 recovery substantially greater than that of other unsecured
7 creditors. I understand the argument that essentially the VEBA
8 and the UAW are the same party but I'm not sure that the legal
9 differentiation here between them should not carry weight with
10 the Court. There is an independent board for the VEBA, as we
11 established. The VEBA is a separate trust fund administered by
12 an independent board of trustees and the VEBA trustees have a
13 fiduciary duty to the retired workers, specifically, and not to
14 the UAW. And it is the VEBA trustees who decide what will
15 happen to the stock in New GM that the VEBA receives.

16 That sounds to me like it satisfies some of the
17 criteria for sub rosa plan argument, which is the one that we
18 were making. The code says that under those sorts of
19 circumstances, if you do a Chapter 11 proceeding, it is
20 intended that there will be some delay. It is intended that
21 there will be time for objection. It is intended that there
22 will be some collaboration and negotiation and that those
23 procedural and substantive safeguards are set up under the plan
24 process. It did not sound like the difference between a sixty-
25 day period and a ninety-day period was so substantial that the

1 planned process could not have been gone through.

2 I understand Mr. Miller's argument. I understand his
3 argument about all the terrible things that could happen if the
4 planned process dragged on. But I also have seen, Your Honor
5 conduct a streamlined procedure and I am sure that you also
6 could have conducted as streamlined a procedure for an
7 expedited plan if that's the way that the debtor and the
8 Treasury had decided to proceed. Good faith of the purchaser
9 under Abbots insures that a 363(b)1 will not be employed to
10 circumvent the creditor protections of Chapter 11 that I've
11 just talked about.

12 THE COURT: Well Abbots is a Third Circuit case, if
13 I'm not mistaken. Would I be more appropriately looking at
14 Gucci in the Second Circuit for that proposition --

15 MR. BRESSLER: I understand --

16 THE COURT: -- on that issue?

17 MR. BRESSLER: I understand Your Honor's distinction
18 and I understand where you're going with it.

19 THE COURT: All right. Continue, please.

20 MR. BRESSLER: And I understand also the DWA is a
21 Third Circuit case but that we now have Chrysler in the Second
22 Circuit, so that's where we are. The testimony has shown that
23 assuming the existing tort claims will not affect the viability
24 of the new company, that discriminating against the existing
25 tort claimants will not help the consumer confidence and

1 reputation of New GM. Does anyone really believe that the US
2 Treasury, for its enunciated reasons of supporting the 363
3 sale, for the jobs, for the position in the American economy,
4 etcetera, would allow the sale to go down for covering what is
5 probably five hundred million dollars but at most nine hundred
6 million dollars worth of tort claims?

7 I want to cover one more area before I sit down, Your
8 Honor, because I think that the Court has a misapprehension.
9 It is correct -- and it sounds like most of the dealers are
10 indeed indemnified by New Co however the Court should know, and
11 we will submit supplemental papers if given the opportunity,
12 that there are states where one cannot sue the dealer for
13 product liability claims. It's a minority of states but there
14 are such states. And the nature of the suits is also different
15 in many other states where the standards for proving a case
16 against the dealer are more stringent and higher than proving a
17 case against the manufacturer and, of course, there are the
18 economic and social realities of, in some rural states, the
19 General Motors dealer being a person in town who is known to --

20 THE COURT: Or he's little league and stuff like
21 that?

22 MR. BRESSLER: Exactly. Your Honor took the words
23 out of my mouth. And the type of recoveries that could be had
24 by a person who's severely injured are certainly different, as
25 I think Your Honor could take judicial notice, against a large

1 national manufacturer deep pocket or against a local dealer. I
2 think I have covered my arguments as to good faith. I think I
3 have covered my arguments as to sub rosa plan and I will let
4 others cover the 363 arguments as to why claims and not just
5 interests should not be release under these circumstances.

6 THE COURT: Okay. Thank you very much.

7 MR. BRESSLER: Thank you, Your Honor.

8 THE COURT: Jakubowski, are you up next?

9 MR. JAKUBOWSKI: Yes, thank you, Your Honor. Your
10 Honor, Steve Jakubowski for five product liability claimants,
11 Callan Campbell, Mr. Junso, Mr. Chadwick, Mr. Agosto and, I'm
12 sorry, Mr. Berlingieri. First, Your Honor, I would like to say
13 that it has been a great pleasure to be here. I teach mock
14 trial at a local high school in Chicago and I'm going to use
15 this transcript as a way of teaching them some of the
16 evidentiary rules, some of the mistakes that can be made and
17 some of the proper ways to address the Court in terms of
18 evidence and I appreciate that.

19 I also would like to thank the lawyers from Weil
20 Gotshal, the -- from the U.S. attorney's office. We have been
21 acting under extreme time pressures. I personally got involved
22 in the case because of my shock at the Chrysler decision. I'm
23 from the Southern Circuit and we look at things differently out
24 there.

25 THE COURT: Especially certain of your circuit

1 judges.

2 MR. JAKUBOWSKI: Exactly. And in fact Your Honor, so
3 within that short time frame I can say that while Gotshal has
4 been fantastic in terms of responding to document requests
5 promptly, providing thirty-five gig data -- document production
6 that had a full concordance index that was fully OCR-ed that
7 enabled us to quickly get to the heart of the issues and I
8 think that's why the trial was as speedy as it was and again
9 the same for the U.S. attorney's office.

10 So, I went to school with Judge Posner and he was my
11 professor and now he's my Circuit Court judge. And again, we
12 look at things differently out there. To us, successor
13 liability is a matter of statutory interpretation and it is not
14 a constitution that we are expounding but a statutory scheme
15 that we are interpreting. And while TWA represents one circuit
16 view, and it's unclear, based on your discussion and what we
17 know from what's happened in the Second Circuit, it's unclear
18 what exactly the Second Circuit holds as to successor liability
19 claims.

20 And so, we also have the Sixth Circuit. And the
21 Sixth Circuit says in the Michigan Wolverine case which is
22 cited in the long footnote in my brief, that case says that
23 363(f) does not allow for in personam claims to be treated as
24 interest in property; they're just not. So, I recall at one of
25 the national conference of bankruptcy judges that -- yes, Your

1 Honor?

2 THE COURT: You think that Michigan Wolverine
3 therefore should be regarded as overruling the White Motor
4 which agrees with you on one of your points but disagrees with
5 you on the bottom line?

6 MR. JAKUBOWSKI: Well, what I think that what White
7 Motor does is -- it agrees with White Motor on the 363(f) point
8 that White Motor says which is that 363(f) does not provide for
9 in personam claims to be treated as interest in property. It
10 says that very clearly and it's --

11 THE COURT: And then issues a free and clear order
12 anyhow.

13 MR. JAKUBOWSKI: And why? And I don't mean to ask
14 you questions but that's rhetorical.

15 THE COURT: I think that we agree there's an
16 implication of 105(a).

17 MR. JAKUBOWSKI: Exactly. And that was in 1986, well
18 before a number of Supreme Court decisions came out which
19 significantly constrained the ability of Bankruptcy Courts to
20 use Section 105 as a roving manner of equity and that's the
21 Raleigh case.

22 THE COURT: We're rolling on the textual analysis and
23 I agree with you that that's where an analysis would start.
24 Let's -- the dance with the textual analysis --

25 MR. JAKUBOWSKI: Okay.

1 THE COURT: -- dance for as long as you can.

2 MR. JAKUBOWSKI: Okay. I dance for a while.

3 THE COURT: But I -- I beg your pardon?

4 MR. JAKUBOWSKI: I can dance for a while on that
5 issue.

6 THE COURT: All right. We still have to stay within
7 the --

8 MR. JAKUBOWSKI: I will. Well, I'm not sure I will.

9 THE COURT: Claims is defined in 101 of the code but
10 interest is not --

11 MR. JAKUBOWSKI: Sure. Right.

12 THE COURT: -- nor is the expression interest in
13 property

14 MR. JAKUBOWSKI: Right.

15 THE COURT: And we're going to come back to stare
16 decisis because of -- I might come to the view that 363(f) when
17 combined with an undefined interest in property under 101 is
18 ambiguous. That stare decisis might be the way that one needs
19 to go.

20 MR. JAKUBOWSKI: I'm sorry, Your Honor. Stare --

21 THE COURT: Forgive me.

22 MR. JAKUBOWSKI: Okay. I'm sorry.

23 THE COURT: But I guess my question to you is when
24 the reason by which a tort litigant can go after a New Co, a
25 purchaser, is solely by reason of the transfer of the property

1 or the acquisition of the property, isn't that something as to
2 which the code is silent and leaves us with a hole that
3 requires judicial interpretation?

4 MR. JAKUBOWSKI: I think the answer to that is no,
5 obviously. That's why I'm here. And the reason I think it's
6 no is for several reasons. First we start with Butner, in
7 terms of what is an interest in property. And Butner says
8 interest in property defined --

9 THE COURT: Well, Butner speaks as property rights.

10 MR. JAKUBOWSKI: Property interests and that's -- and
11 that's no different than interest in property.

12 THE COURT: Doesn't Butner deal with what is
13 property?

14 MR. JAKUBOWSKI: No. It deals with who has the
15 authority -- that where -- how are those rights determined.
16 Under what law are those rights determined. And those rights
17 are state law rights; they're founded in state law. And the
18 problem with Chrysler in determining that all tort liabi -- all
19 product liability claims of all fifty states are interest in
20 property that can be rejected as -- they can be sold free and
21 clear is that it doesn't recognize that that determination is a
22 state law determination and unless Chrysler has gone out and
23 examined every single one of the fifty states to determine
24 whether or not it is an interest in property in that state, I
25 think it erred. And worse than that, I don't think it even had

1 the jurisdiction to be able to do that because at the end of
2 the day, Your Honor, this is a question -- this is a case of
3 boundaries. And the questions are from a statutory perspective
4 or from a jurisdictional perspective, how far can we go here?
5 And I think we're limited by the jurisdiction of 157.

6 THE COURT: Well, the problem I have with 157 is that
7 distinguishes between a lowly bankruptcy judge, like me, can
8 decide and the higher level Article 3. But wouldn't the same
9 issue exist at district judge who are asked to make the same
10 decision that I'm asked to make?

11 MR. JAKUBOWSKI: Yes.

12 THE COURT: All right.

13 MR. JAKUBOWSKI: Yes, it would. But they still could
14 at least apply the law of the state. And determine whether or
15 not it's an interest in property under the law of the
16 particular state. In some states it may be and some states it
17 may not be. The general tendency among the states that are
18 surveyed in my brief in the long footnote, is that from a
19 statutory perspective, these are not interest in properties.
20 So, in a way, we just have to get beyond that and see -- well
21 and so -- and deal with the policy issue of whether or not from
22 a policy perspective it makes sense to sell the assets free and
23 clear. In most of the cases it doesn't really matter. But
24 when you're dealing with a case where there's sixty-nine
25 million vehicles on the road and we know there's nine

1 hundred -- well let's take out the future claims -- there's
2 five hundred, six hundred, something like that, million dollars
3 worth of reserves out there for future claims, I think we -- I
4 think we have to step back and see whether or not the policy --
5 you know, how to deal with the policy issues that are
6 applicable here. And one of the -- one of the things that was
7 raised in the reply brief from Weil Gotshal is it cites all
8 these string cites that of cases that successful liability
9 orders were entered.

10 Now, I have two problems with that. One is a
11 procedural problem and that is that your case management order
12 said very specifically, that when they string cite orders that
13 have not -- that are not in books that we can find on LexLaw,
14 that they have to go forward and lay out the procedural
15 background and the context and why that's relevant. They
16 didn't with respect to any of those. And I don't think the
17 burden should be on the parties to figure out what the
18 relevance of each one of these is or whether it's even
19 distinguishable. So, I would ask, and I think that the case
20 management order says that you will not consider those cases
21 and I ask that you not consider them.

22 THE COURT: Well, I hear you on that.

23 MR. JAKUBOWSKI: That's --

24 THE COURT: But since I know the cases of that
25 character that was --

1 MR. JAKUBOWSKI: Um-hum.

2 THE COURT: -- decided on my watch --

3 MR. JAKUBOWSKI: Okay. True. Which ones were those,
4 Your Honor?

5 THE COURT: I'd have to go back in your brief but I
6 suspect it was Bearing Point --

7 MR. JAKUBOWSKI: Okay.

8 THE COURT: -- perhaps Adelphia.

9 MR. JAKUBOWSKI: Okay.

10 THE COURT: And perhaps one or two others. I do know
11 that for the most part 363(f) has not been disputed and ruled
12 upon by the judge but at least in one exception, when using
13 corporation of America, I think Mr. Smolinsky's in the
14 courtroom, I ruled against your opponent, the United States
15 government on that when their local U.S. attorney's office was
16 representing the EPA and was asking for successor liability
17 when I felt the environmental disaster was being sold from one
18 -- from the debtor to the purchaser.

19 MR. JAKUBOWSKI: Um-hum.

20 THE COURT: And I ruled in that case after a 363
21 analysis that from day one the purchaser would be liable for
22 the mess and for continuing duties from then on to keep it
23 clean and/or to clean it up --

24 MR. JAKUBOWSKI: Um-hum.

25 THE COURT: -- but that it wasn't liable for the

1 original debtor's liabilities to the U.S. government for
2 penalties and for prepetition duties to comply with orders to
3 clean it up. That U.S. attorney wasn't very happy with me then
4 but they did not appeal.

5 MR. JAKUBOWSKI: Um-hum.

6 THE COURT: Now, I guess they're very happy they
7 didn't appeal. But you're quite right that the practice in
8 this district and in Delaware, and maybe in other parts of the
9 country, are just throwing out a bunch of orders with -- where
10 something was done without the judge ruling on it ain't the
11 most persuasive precedent.

12 THE COURT: Right. So --

13 THE COURT: -- but what they're doing has been ruled
14 upon by a Bankruptcy Court affirmed by the Second Circuit,
15 which is where I really need your help --

16 MR. JAKUBOWSKI: Okay, and I will be --

17 THE COURT: -- because --

18 MR. JAKUBOWSKI: Um-hum.

19 THE COURT: -- I don't like to cross the circuit.

20 MR. JAKUBOWSKI: I understand that.

21 THE COURT: And --

22 MR. JAKUBOWSKI: And I can't blame you.

23 THE COURT: Earlier this evening. I politely
24 suggested to the circuit that it reconsider something because I
25 thought it was really very wrong but until the circuit told me

1 I could, I did what the circuit tells me to do.

2 MR. JAKUBOWSKI: Okay. So, here's -- obviously, I've
3 thought of that issue and I don't necessarily have the greatest
4 answers in the world, but I think I have good answers. First,
5 the circuit has not come out with his opinion yet and so we
6 don't really know what they've held with respect to this issue.
7 They've said substantially the reasons but these have different
8 facts and we'll go through some of the facts that are
9 different, that particularly make this different from a ruling
10 on a policy grounds as in TWA and Chrysler. Because at the end
11 of the day, TWA and Chrysler were decided on policy grounds.
12 If you throw away the statutory, they were decided in the
13 alternative. And you throw away the statutory ground and you
14 say, okay, well, we got it wrong on the statutory ground but it
15 doesn't matter because it's affirmed on the policy ground.
16 Here I think that the policy grounds are different, and I'll
17 get into that in a little bit. So, that's the first thing.

18 The second is -- and that -- the fact is there is a
19 split in the circuits. I mean, my circuit comes down very
20 strongly in this issue and Judge Posner is very articulate on
21 this and he's no patsy to the plaintiff's bar by any stretch of
22 the imagination. And when he comes down and says there are
23 boundaries to 363(f), this decision came down two weeks after
24 TWA. And he specifically cites to that and says, it's -- this
25 is not a lien we're talking about, this is possessory interest.

1 It's not anything but it is an interest. It is -- it has
2 something tangible and it has a right to that property.

3 So, I think that -- so let me get to the pot -- let
4 me get to the facts here and why I think this is
5 distinguishable from Chrysler. And so, I don't know if you
6 have the Chrysler opinion in front of you, if you don't, Your
7 Honor, I'd be happy to certainly read through what I think are
8 the key aspects of it.

9 THE COURT: Give me a second. I'm not sure if I
10 brought it out with me or not.

11 UNIDENTIFIED SPEAKER: If Your Honor would like a
12 copy.

13 THE COURT: Yes, thank you. Just hold on a second.
14 I found my White Motors so maybe there's something funny --

15 MR. JAKUBOWSKI: Okay.

16 THE COURT: I have a TWA. I have the Chrysler
17 opinion.

18 MR. JAKUBOWSKI: Okay.

19 THE COURT: Go ahead.

20 MR. JAKUBOWSKI: All right. So, I start at -- I
21 don't know if you have the West version of it --

22 THE COURT: I have the West one.

23 MR. JAKUBOWSKI: I start at headnote 14, which starts
24 with Category 3 consists of tort and consumer objections. It
25 says, the leading case on this issue --

1 THE COURT: Time out.

2 MR. JAKUBOWSKI: I'm sorry. The page number?

3 THE COURT: You have a jump cite --

4 MR. JAKUBOWSKI: Yeah. I do --

5 THE COURT: Mine actually has page references
6 already.

7 MR. JAKUBOWSKI: Okay. It's -- I think it's 110 --
8 111. And it starts Headnote 14.

9 THE COURT: Okay.

10 MR. JAKUBOWSKI: Okay. So, I'd like to start with
11 first, however, the leading case on this issue, In re: TWA.
12 So, I guess as long as we'll do a little exegesis here. First,
13 I don't think that's a leading case on this issue. It may be
14 the leading -- it may have -- it may be -- Collier says it's
15 kind of a trend, but if you look at even the quote in the
16 omnibus reply from the debtor and you actually read what
17 Collier says, it doesn't say that everybody follows TWA now.
18 And in fact, when you look at the case law, when it comes to
19 363(f), nobody follows TWA. Policy is another story. We'll
20 talk about policy. But in terms -- I don't think it's a
21 leading case. That's number one. Number two -- and you've
22 got Fairchild -- I mean there are a whole bunch of cases that I
23 cited in my brief that go against what TWA says with respect to
24 the statutory 363(f). And then the next sentence, the code
25 court overrules TWA, overrules the objections. Even so --

1 THE COURT: No, it says the court follows TWA --

2 MR. JAKUBOWSKI: -- follows --

3 THE COURT: -- and overrules the objections.

4 MR. JAKUBOWSKI: I'm sorry. I apologize, Your Honor,
5 that's correct. And then it goes on, and I would like to
6 criticize this next line. Even so, in personam clients,
7 including any potential successor, state successor or
8 transferring liability claims against New Chrysler, as well as
9 in rem interest are encompassed by 363(f) and are therefore
10 extinguished by the sale transaction, okay, citing White Motor
11 which we've already talked about, does not hold that at all.
12 And Ashburn was decided on policy grounds. It doesn't even
13 mention 363(f) from a statutory perspective. So you can't say
14 don't --

15 THE COURT: By that you mean, it was a 363(f)
16 decision but it didn't engage in textual analysis --

17 MR. JAKUBOWSKI: None.

18 THE COURT: -- of the type that you think should be
19 engaged in.

20 MR. JAKUBOWSKI: Has to be. The court says that --
21 the Supreme Court says Ron Pair, BFP -- I mean one after the
22 other, just start with the text. And you branch out and I
23 wanted to get to Judge Waldron. I mean, he at the NCBJ, right
24 after BAPCPA rule came down -- everybody's pulling their hair
25 out -- how do you determine this stupid statute? And so they

1 say, you have a toolbox. And the toolbox, you start with plain
2 meaning. And after -- and you look. Is it plain? Is it
3 clear? And you -- okay. Well maybe it is. Maybe it's not.
4 But then you look at Piccadilly and you look at some of these
5 other cases and they say, well look at how else it's being used
6 in the code. So that's why I attached to the brief the forty
7 times that the words "interest in property" are used in the
8 code. And there's not a single time that you can replace the
9 word interest with claim and have it make any sense at all.

10 And then you look at -- and then you say, okay, well
11 are there any Supreme Court cases that have looked at interest
12 in property. Look at Barnhill head. Barnhill's a great case.
13 You know -- it's known for when -- when is the date of
14 transfer. It's not when is the date of transfer. It's when
15 did the interest in property -- when was the interest in
16 property transferred? And the interest in property was
17 transferred when there was an interest in the property. And
18 the claim against the debtor for a dishonored check, for a
19 bounced check, is not an interest -- or for a check, for the
20 right under a check, is not an interest in the property in the
21 debtor's account. That is a critical case.

22 Now, the other case that's a great case is BFP, which
23 Judge Scalia is looking at the tortured definition of
24 reasonable equivalent value and says you just -- you can't
25 torture the language of the bankruptcy code to cut -- you know,

1 this left-handed, around your back, you know, to scratch your
2 nose. You just can't do that. Because you'll give no meaning
3 to what the code is. And that's what TWA did. Because by
4 saying that they had to elevate -- that basically, if the
5 debtor had never used the assets in the way the way they used
6 it, the claim never -- would have never come up in the first
7 place. Well that's -- then anything is a property in interest.
8 It has -- that's why Judge Scalia said in -- it needs to be the
9 majority, not the dissent but the majority in BFP, he said, you
10 know, that would be infinitesimal -- to put reasonable and
11 equivalent value the way that you wanted to -- you may as well
12 have reasonable infinite value. You may as well mean anything.
13 And it's the same here. If you're going to say that an
14 interest in property is any -- arises with respect to any claim
15 as to which there's -- from simple deployment of the debtor's
16 assets, then you're basically saying there's nothing that's
17 not an interest in property. So, anyway, that's kind of my
18 response to that issue.

19 The second -- the next point kind of leaves the
20 statute and goes to policy. Now before leaving the statute and
21 going to policy, there are other tools in the toolbox that I
22 think are important, that I raised in my brief and I'm not
23 going to explain them here, but that are important to look at.
24 And the first tool after you go through the language, and you
25 look at interest in property, you then go to Congressional

1 intent. And so how do you determine it here? And there's
2 three basic rules. First, you look at the other use in the
3 code. And 1141(c) is a perfect example of how Congress could
4 have structured 363(f) to read exactly the way everybody who's
5 a proponent for the sale wants to read it, because it includes
6 interest in property whereas 363 -- claims and interest in
7 property and not just interest. And so I've cited to this
8 footnote of the National Bankruptcy Review Commission. It was
9 chaired by Marcia Goldstein, where they specifically -- this
10 was the precursor to BAPCPA. This was the 1997 --

11 THE COURT: Yeah, but -- time out here, because she
12 pointed out that Congress could have said it a lot clearer.
13 But the fact that Congress has not said things as clearly as it
14 could, and I don't want to be disrespectful of Congress, but
15 they're a bucketful and --

16 MR. JAKUBOWSKI: I --

17 THE COURT: -- especially messy. But across the
18 code, where Congress could have said stuff a lot better to
19 express itself.

20 MR. JAKUBOWSKI: And --

21 THE COURT: I mean, the Catapult rule. Do you think
22 for half a second that Congress intended that a reorganized
23 debtor couldn't use his own intellectual property?

24 MR. JAKUBOWSKI: No. But again, we're not talking
25 about Supreme Court case law. There are Supreme Court cases

1 that say, that Congress meant what it says and it says what it
2 means. And that is -- I mean if anything's binding on you,
3 Your Honor, it's the Supreme Court. And that is the rule that
4 it follows through the Second Circuit. And we saw the Groom
5 versus United States case, where you -- you mention something,
6 it's you know, it assumes that it's not there. And it's not
7 like this is -- it's not like this is BAPCPA but it's not
8 BAPCPA. It was identified in '97. And it would -- nothing
9 could have been a more pro-business change to the code than
10 2005. And it's not there.

11 So, I think you can't presume that Congress, you
12 know, was lazy or didn't know what it was doing. I think in
13 this instance, I don't think that's a fair presumption and I
14 think in that respect, you're better off sticking with the
15 Supreme Court guidelines that say, as in *Decone v. Dela Cruz*
16 (ph.) case, cited *Gratzluf* (ph.) and all the ones that I've
17 cited, that you're better off -- you're safer assuming that
18 Congress says what it meant and meant -- and knows how to do
19 that.

20 The next -- and then, of course, you look at pre code
21 law. Pre code law was actually cited in the Second Circuit
22 case in *Manville*. And so you ask, what is the Second Circuit's
23 view on this? And until -- until *Chrysler*, I assumed the
24 Second Circuit's view on all of this was the *Johns-Manville*
25 case that just reversed by the Supreme Court, the *Traveler's*

1 case. But it got reversed by the Supreme Court on such a
2 narrow ground that it didn't reverse it at all on any of the
3 other issues which were, you know -- which were, I think,
4 controlling in this case. You can't condition financial -- you
5 can't condition releases on financial participation. That's an
6 abuse. And it cites the Carta case. And it cites the
7 Combustion Engineering. I mean, you -- the idea that you
8 can -- that you can condition a major transaction in a
9 bankruptcy, whether it's a sale or whether it's a plan on the
10 financial participation, the do or die conditioning of the
11 purchaser, is an abuse. That's what the Second Circuit calls
12 it. An abuse.

13 And you look at the transcript in Travelers.
14 There's -- you don't find a justice on the Supreme Court that
15 disagrees with what Justice Stevens and Justice Ginsberg said
16 in their dissent that when it comes to jurisdiction and
17 releases of non-debtor parties that -- that you can't do that
18 in a bankruptcy case without extreme, extreme protections. The
19 Court just doesn't have that power. Doesn't -- it's beyond the
20 boundaries. Out of bounds. So, I think, Your Honor, that
21 maybe this is the time, before the Second Circuit rules, to get
22 it right. You have the opportunity, as nobody else will after
23 you, to tell -- to give the Second Circuit some guidance as it
24 comes down with that opinion.

25 THE COURT: Usually it goes the other way around.

1 MR. JAKUBOWSKI: Usually it does but here's -- but
2 here you do have that opportunity because they haven't ruled
3 yet. And my guess is that they're pulling their hair over this
4 issue. And as I read the news reports about what happened in
5 the transcript was -- should we just let the Supreme Court hear
6 it? Okay, let's take it over there. Everybody said, yeah,
7 let's go there. But the Supreme Court does --

8 THE COURT: I lost you.

9 MR. JAKUBOWSKI: I thought that -- I thought that the
10 expedited nature of that process was so fast, that I'm not sure
11 that the Second Circuit had the opportunity to give it the kind
12 of serious consideration, with respect to this issue, the other
13 issue I don't have any quarrels with. But this issue, I don't
14 think that that was the focus.

15 THE COURT: Is that the kind of judgment that I, as a
16 Court, two levels below the Circuit, am I allowed to make?

17 MR. JAKUBOWSKI: Yes. I think that --

18 THE COURT: Yes?

19 MR. JAKUBOWSKI: I think so.

20 THE COURT: Meaning --

21 MR. JAKUBOWSKI: Here today.

22 THE COURT: -- assuming arguendo that I agree with
23 you on textual analysis, I mean, I don't think I'm going to
24 lose my job if they disagree with me but I -- I really think
25 I've got to follow my Circuit.

1 MR. JAKUBOWSKI: I don't -- I don't know what they
2 said on that issue. I don't know what they said. And I don't
3 how they applied it to this case.

4 THE COURT: If anything, Judge Gonzales, where I'm on
5 record in four, five, six decisions as saying that -- in
6 believing in stare decisis and that the interest of consistency
7 and predictability for the financial community, certainly in
8 this district but nationwide since so many people look to law
9 out of our district, is that we should follow each other's
10 decision. I'm not talking about district judges; I'm talking
11 bankruptcy judges who know bankruptcy.

12 MR. JAKUBOWSKI: Okay. And you know what?

13 THE COURT: Forgive me.

14 MR. JAKUBOWSKI: I'm sorry.

15 THE COURT: And we follow each other's decisions in
16 the absence of manifest error. And assuming without now
17 deciding that I agreed with you on textual analysis, and/or
18 believing that Fairchild is a better reading than somebody
19 else's reading of 363(f) and its related provisions, I sure
20 don't think Judge Gonzales' decision is fine here.

21 MR. JAKUBOWSKI: Well, I'll tell you why I think it's
22 distinguishable. Because let's assume that it's error on part
23 A but who cares because you can decide in the alternative. And
24 so let me explain why I think this case differs from Chrysler
25 on policy grounds and therefore is -- will fit within the

1 Second Circuit's ruling on policy -- on policy grounds. And
2 for that, let's turn to the next Headnote 15, 16 and 17. The
3 first -- there're two basic policy grounds in Chrysler. One
4 is -- well, excuse me. The two basic policy grounds in TWA.
5 The one of them is picked up in Chrysler. But let me talk to
6 TWA's -- both of their policy arguments because I think they're
7 both important in terms of being able to ground your decision
8 here.

9 And let me deal with the easy one. The easy one is
10 TWA decided the way it did in large measure because of the fact
11 that they were unwilling to accept the idea that some creditors
12 would do better than others. They were unwilling to upset the
13 relative priorities among the creditors by giving one a leg up
14 and a second bite at the apple as Judge Posner said is fine,
15 TWA said is not fine. They weren't -- they just weren't
16 comfortable with that idea. Well, that, as we know, does not
17 apply here. The relative priorities were irrelevant to the
18 purchaser and there's -- the relative priorities are being
19 undermined at every single level of debt.

20 So some creditors are getting paid in full, some
21 aren't and everything depends on one issue. One issue only.
22 And that is, as Mr. Wilson well stated, is the -- any liability
23 was assumed that was necessary to advance the commercial
24 interests of the successor. That was it. That was the sole
25 basis for the decision. Not relative priorities, that actually

1 didn't matter and the reason that it didn't matter because
2 nobody was getting anything in this case anyway so they could
3 do whatever they wanted. That was the whole point of why it
4 wasn't sub rosa and all that stuff.

5 So, the question then is okay, let's put issue A from
6 TWA aside and now let's look at the other issue. And this is
7 the key issue and Judge Gonzalez touches on it in the first
8 sentence of Headnote 15. And he says other objections are
9 premised on the category that a free and clear sale would be
10 fundamentally unfair, inequitable or in bad faith. The
11 policy -- that I really highlight that word; the policy, not
12 the law -- the policy underlying 363(f) is to allow a purchaser
13 to assume only the liabilities that promote its commercial
14 interests. See Fish -- New England Fish And White Motor. That
15 is true. That's what those cases hold. It's policy.

16 But the question is can you decide -- can you hold
17 here that the policy applies. In Chrysler, there was a real
18 issue on whether or not the buyer would really actually
19 continue would the successor liab -- if the successor
20 liabilities were in place. Here, I don't think the evidence
21 shows that. And I think you need to make a factual finding on
22 this. And the reason I don't think -- and that's what I think
23 will distinguish this case from the ones before you or the ones
24 to the side of you or above you and the factual finding is
25 this. The debtor and the treasury sat down and they split up

1 the liabilities and they had this -- there were pensions that
2 were being assumed, and credit bids of secured debt and other
3 secured debt would be assumed and they went through the whole
4 laundry list.

5 And there was -- if you look at Exhibit 6 to the
6 Henderson deposition, there were 176 billion dollars of
7 liabilities on the balance sheet of GM at 12/31/08. And they
8 took six billion and put them in a bucket on the side and said
9 these are our politically sensitive assets and liabilities.
10 We've got environmental product liability, asbestos, splinter
11 unions and some other miscellaneous. Add total, six billion
12 dollars. So, those were politically sensitive in the sense
13 that nobody really knew, as of May 7th, how they wanted to deal
14 with those yet because of the ramifications of them from a
15 business perspective and from a political perspective; that's
16 the testimony. And so they had continuing discussions about it
17 and continuing phone calls and letters from senators as to all
18 this stuff. And as time went on, decisions were made as to
19 whether to assume them or reject them or visa versa.

20 And as of -- and when Mr. Henderson went to the board
21 on May 29th, they reached a decision as to what that
22 segregation would be. And you look at the PowerPoint that's
23 attached to his deposition as Exhibit 31 which I know it's been
24 designated. You will see that at page, I believe, 8, it's the
25 section that's entitled liabilities to be assumed at closing.

1 So, at the bottom there's a bullet; No purchase price
2 adjustment regardless. And what that meant was that there
3 would be no segrega -- that once that decision was made as to
4 the liabilities that would be segregated in that politically
5 sensitive bucket, there would be no further adjustment to the
6 purchase price either a higher purchase price for the purchaser
7 or a diminution in the estate -- to the estate in terms of
8 proceeds, if subsequent decisions were made that changed that
9 allocation as to that bucket.

10 And how do we know that that's true? Because there
11 were two changes that were made with respect to product
12 liability claims and neither of them resulted in a change of
13 the consideration. There's not a single case out there that
14 holds that if there's no change in consideration that TWA
15 analysis doesn't apply. Because in all those cases, there's --
16 in TWA, there's a possibility of a discounted bid. Every case
17 where there's an issue with respect to the effect of the estate
18 because of the diminution in consideration, then you had a TWA
19 issue and that's why they were able to approve the sale and
20 that's what Chrysler was about. But that's not the case here
21 with respect to this bucket.

22 THE COURT: I understand. Continue.

23 MR. JAKUBOWSKI: Okay. So, I guess --

24 THE COURT: And forgive me Mr. Jakubowski. I've been
25 hearing a lot --

1 MR. JAKUBOWSKI: I know and I --

2 THE COURT: -- that you've got the most important
3 issue on the motion today.

4 MR. JAKUBOWSKI: Thank you, Your Honor.

5 THE COURT: But try to --

6 MR. JAKUBOWSKI: Believe me, I think I've said just
7 about everything -- I've danced just about as far as I can
8 here. Obviously, I have other things that I say in my brief
9 but I would like --

10 THE COURT: Which I've read and I'll read again.

11 MR. JAKUBOWSKI: Thank you. I would like to raise a
12 couple of issues with respect to the argument of counsel.
13 First, maybe other parties want more. This is really not a
14 question, in my view, of giving some -- of simply giving
15 somebody more. This is a question of what can you do? What
16 does the law -- what are your boundaries? What does the law
17 allow you to do? And that's different. That's why we're here.
18 You know, bankruptcy is what it is and you roll the dice with
19 the way they are but there are issues -- this isn't just a
20 question of wanting more. This is a question of what you can
21 do.

22 Now, one of the things that I haven't heard yet that
23 I think is critical here and that surprises me is that the idea
24 that if you change this bucket and say look with respect to
25 this bucket that's politically sensitive, that there was no

1 change in consideration, I'm not going to allow -- I don't
2 think I have the authority under TWA or any other case to allow
3 those not to be assumed, I'm sorry. You know, you challenge
4 lenders -- they want to be a commercial lender, come into
5 court -- how many times have you told a commercial lender you
6 can't do it, I'm sorry. Go back, come back with something
7 else. That's what they want to be, I think that's what you
8 have to do here. And there's a number -- there's a lot in
9 Second Circuit authority about telling lenders to go home and
10 come back with a new proposal.

11 But more importantly, let's say they were --

12 THE COURT: DIP lenders overreach all the time.

13 MR. JAKUBOWSKI: Well, exactly. Okay, but --

14 THE COURT: But I don't know if there's the same
15 basis for conclusion that the United States government is
16 trying to avoid a systemic risk that's going to affect not just
17 a couple of hundred thousand North American employees or maybe
18 the couple of hundred thousand is beyond North America, I'm not
19 sure but many, many employees. And as importantly, the
20 supplier community that needs GM to survive so they could
21 survive and the communities that look to GM for their economic
22 health. You really think that's analogous to the way that
23 commercial lenders behave?

24 MR. JAKUBOWSKI: Well, in this instance with respect
25 to this issue, yes. And the reason is for -- twofold. First,

1 Mr. Wilson, if he didn't say anything, he said I am a
2 commercial lender. That's one thing -- in this case I'm a
3 commercial lender, it's a commercially reasonable, I'm going to
4 do what a lender's going to do.

5 THE COURT: Wasn't the context of that where people
6 were trying to say that forty-nine million bucks of taxpayer
7 money should be converted to --

8 MR. JAKUBOWSKI: No. No, it wasn't. It was in
9 response to my questions. It was a response to the question of
10 does the lender -- why are you reject -- why are you not
11 assuming these? Because I'm a purchaser. I'm basically -- I'm
12 a credit bid lender. I'm not interested in this stuff. I have
13 no -- what obligation do I have to pick these up? That's what
14 every lender in the world that comes in with a credit bid says.
15 So, with respect to this issue, they're acting like a
16 commercial lender and I think they should be treated as such
17 and that's the way they want to be treated and that's why
18 they're being so hardnosed here.

19 Now, the other thing is that if they were -- let's
20 say they were to come in and say, Your Honor, congratulations,
21 you just killed GM. I would turn to the Creditors Committee
22 and say, when are you filing the complaint for breach of
23 contract? They have a contract here. They have a contract
24 that they are required to act commercially reasonable under.
25 They can't walk because of -- because there's a few -- for

1 62,000 bucks in some bucket. They can't do that. And I'm sure
2 the Creditor's Committee would jump on that.

3 So, I think it's different. I don't think they can
4 come in here and just walk away. They signed a contract. They
5 put us all through a significant amount of work and toil with
6 respect to this. And they can't just walk away from that
7 contract without exercising commercial reasonableness. And
8 walking away from a bucket that is inappropriate as a matter of
9 law to walk away from, that there's no effect on the estate if
10 they're required to take it, is commercially unreasonable
11 breach of contract were they to take that position. And they
12 would be, in my view, responsible for all the damage to the
13 estate for that, whether it's a -- whether it's a subordination
14 that they're in, so you subordinate their debt. You know the
15 good thing is? You make that decision.

16 THE COURT: I would think the Court of Claims would

17 MR. JAKUBOWSKI: Well, I don't know. In Court of
18 Claims of Chicago it's about a two hundred and fifty dollar
19 limit. That's why I'm laughing.

20 THE COURT: A court -- a Federal Court?

21 MR. JAKUBOWSKI: Ok. That's -- I guess that's right.

22 THE COURT: That's suffering from any --

23 MR. JAKUBOWSKI: Well that's right.

24 THE COURT: -- issue that's subordinated --

25 MR. JAKUBOWSKI: Well, no I think it is.

1 THE COURT: -- and --

2 MR. JAKUBOWSKI: I don't think it is here because
3 they came in. They're acting like a commercial lender. They
4 signed a contract they're subject to. They're subject to the
5 normal laws of contract. If you're a defense contract, the
6 U.S. breaches the contract, they come before a Court of Claims
7 and get sued and pay up if they have to.

8 THE COURT: Go on.

9 MR. JAKUBOWSKI: Now the other thing is that there is
10 no -- there is no factual basis in the record to say that they
11 will -- they will walk. In fact, I think, because I don't have
12 the transcript, but I think when we see the transcript of Mr.
13 Wilson's testimony, he will say that there were an infinite
14 number of possibilities of what could happen. And he did go
15 through all the scenarios of what they might do and how they
16 might respond. So, I don't think it's -- this is -- they are a
17 commercial lender and they're not a commercial lender. Right.
18 They're a commercial lender in the way they're acting but
19 they're not a commercial lender in the sense that they're in --
20 it's a national priority -- and Mr. Wilson himself said that we
21 will respond. We don't know how they're going to respond.
22 They don't know how they're going to respond. But that's why
23 it's in your hands.

24 Now, what's interesting is that just the way the
25 world is set up here, they negotiated with everybody but they

1 can't come to the Court and say, Your Honor, what's acceptable
2 to you? We'll make this part of the deal. They said -- Mr.
3 Wilson said, we paid the least amount we could possibly pay for
4 this. It turned out to be ninety billion dollars. Okay, so
5 they paid ninety billion dollars for the company. But that was
6 the least amount they had to pay to get the deal done, because
7 it was so important to them to get the deal done, that's what
8 they paid. Now what is this -- so -- but they couldn't come to
9 you and say, Your Honor we think -- we talked to counsel, we
10 think we know what the law is and there's been a lot of
11 precedent in the Circuit, there's Chrysler, there's all these
12 other decisions. But they can't come to you -- they didn't
13 even know you -- who -- whether you were going to be the judge,
14 and negotiate out what would be an appropriate resolution in
15 advance.

16 So, we had to go through all of this and come here
17 and they say to you, okay negotiations are over, this is what -
18 - take it or leave it. How fair is that? I mean, it's only
19 because of the way it's set up that they didn't come to you in
20 advance. But they went to everybody else in advance, they got
21 everybody else's agreement so why don't make them come back to
22 you with the right response and get the right answer and follow
23 the law and respect the boundaries and do the right thing?

24 I have nothing else, Your Honor.

25 THE COURT: Thank you. Okay. I'll hear other people

1 on the tort side. But, obviously -- I think we've pretty much
2 covered things. Mr. Esserman, I'll hear from you next. Mr.
3 Esserman, I think at this point I'd prefer if you limit
4 yourself to things that relate to asbestos.

5 MR. ESSERMAN: That's what -- I'm sorry.

6 THE COURT: Okay, go ahead.

7 MR. ESSERMAN: Sandy Esserman for the ad hoc
8 committee. That's what I was intending to do, Your Honor, I
9 was not going to cover any other of the topics that were either
10 covered by other parties or covered in my brief. And to a
11 certain extent Mr. Jakubowski covered certain things that I was
12 going to cover. In fact, his presentation sounded like the
13 presentation of "This is My Life", he cited so many cases that
14 I either argued and won or lost or have been in.

15 But anyway I want to focus strictly on the future
16 clients' issues which I think is to me one of the more
17 troubling aspects of this -- of this sale. And a week or so
18 ago I asked that there be a future clients tort czar appointed
19 in this case. Well, why did I ask that? Because what I felt
20 GM was doing, in fact they are doing, is trying to bind the
21 futures in some way without having the futures present or
22 having the futures represented. And the way I left the hearing
23 was, it's -- it was and is the choice of GM on that issue.

24 There was a way to do this; they chose not to. With
25 asbestos claims in particular it's very specific about how you

1 bind future claims and that's through a Manville type 524(g)
2 type solution. We think that's clear from the statute and why
3 is it clear from the statute? It's a matter of -- it's not
4 just the statute is a matter of constitutional due process.
5 The futures are here, I don't represent the futures, I don't --
6 I may have a future claim, I don't know it. I sure hope not.

7 But we're -- we're talking about a claimant that is
8 going to develop a disease two, three, four, five, six, seven
9 years down the road. We have testimony that there's an
10 estimate of ten-year present value that there's going to be
11 asbestos claims. Ten years. Up to at least ten years from
12 now, probably more. There's a long incubation period. This is
13 very well known and those people are not present. They cannot
14 speak and it's hard to see under the constitutional due process
15 binding them in any way.

16 There's no notice that can be given or should be
17 given. And I think we need to look not just to the statue of
18 524(g) but also the practical implications of the whole thing.
19 Let me just give You Honor an example. This is how the case
20 could well come down. Your Honor could approve the sale. This
21 could be a wrap-up in say two years, perhaps, maybe less.
22 Maybe within a year Your Honor's going to institute a bar date,
23 there's going to be a claims bar date. Probably a year or two
24 or so there's going to be distributions, year three or day two
25 plus one someone is going to get sick of cancer and die.

1 Someone who was a mechanic that been working on a GM -- on GM
2 cars. It has a twenty, thirty, forty, ten-year -- who knows
3 how long incubation period.

4 Where is that person going to go? Well, you heard
5 some testimony, they can't, according to the -- the purchaser,
6 the purchaser says no, not me, I'm not taking any of that
7 liability. So if -- if Your Honor would uphold that, that
8 claimant has -- cannot go to New GM, notwithstanding the
9 successor claims issues that have been discussed so far, and he
10 can't go to OldCo, because there's been a distribution made and
11 a bar date has been instituted.

12 And that's the problem and that's why 524(g) has been
13 instituted. In addition we've had a decision that came down
14 that won in the Second Circuit and lost in the Supreme Court
15 but I don't think it's really a loss, and that's the Manville
16 case, also known as Travelers v. Bailey, which came down and I
17 think this Court is going to need to reconcile anything that it
18 does in this decision with regard to future tort claims --
19 future asbestos claims with the June 18th, 2009 decision of the
20 Supreme Court.

21 These -- I think that court very clearly held that --
22 and it was an unusual decision, Second Circuit decision had a
23 lot to it also that wasn't necessarily reversed. But in
24 essence it held that when you're before the court, for
25 instance, my tort committee, they're all current claimants,

1 they're before -- they're before your Court. They're going to
2 be bound whatever you do and say, whether it's extra-
3 jurisdictional or not.

4 But what the Supreme Court said a couple weeks ago
5 were those people that were not there cannot be bound by
6 anything that happens in the bankruptcy court. And in that
7 decision, the slip opinion at page 17, they specifically cite
8 how they could be bound and what kind of channeling injunction
9 has to -- can be issued specifically citing 524(g). And they
10 say on direct review today "A channeling injunction of the cert
11 issued by the bankruptcy court in 1986 would have to be
12 measured against the requirements of Section 524(g) (to begin
13 with at least)" and that's a direct quote.

14 And in that decision of a couple weeks ago we're
15 going back to the Second Circuit, unfortunately Judge
16 Sotomayor, who was on my panel is -- will no longer be there
17 probably, but the other judges will be. And we're going to
18 have to determine whether my clients in that case in fact were
19 bound by the 1986 decision, because the Supreme Court left open
20 the issue and said we are not necessarily bound by the 1986
21 decision or injunction, channeling injunction of the court, if
22 they somehow were not present or represented or did not exist
23 or whatever and they said the same thing for the Chubb
24 Insurance Company.

25 So I think to a certain extent the issues that Your

1 Honor has to wrestle with are constitutional and jurisdictional
2 as well -- as well as sale. And in my view, dollar-wise I
3 don't want to say it's a pimple on the elephant but this is not
4 an asbestos driven case; we know that. But these are
5 constitutional and due process issues that we consider to be
6 very, very important and have to be dealt with, with
7 appropriate consideration.

8 So I would urge Your Honor to reconcile whatever he
9 does with that opinion of the Supreme Court. In addition, Mr.
10 Bressler referred to some colloquy of the Second Circuit in the
11 Chrysler decision, and there's been some discussion of that.
12 I'm sure I'm misremembering this and the record will reflect
13 what actually happened but I actually think that was colloquy
14 that I had with Judge Sack and Judge Sack was saying to me
15 during that oral argument, because I was involved in that one
16 too, while future claims clearly, you know, they may not be --
17 well, you just go ahead -- you just go ahead and institute
18 suit. And my response to that was that's sending the wrong
19 message to ignore a court order or to try and get around a
20 court order or hope a state court will ignore a successful
21 liability or the court that says you cannot do something.

22 THE COURT: One of the problems I have, Mr. Esserman,
23 is how I should work with things the judge is saying as a part
24 of the back and forth with counsel in oral argument I remember
25 an instance in Adelphia where somebody cited me a transcript

1 from a certain district judge and I couldn't believe some of
2 the things she said, but then I realized that judges say all
3 sorts of things in oral argument, at least sometimes they do
4 want to be devils' advocates; sometimes they mean them and
5 sometimes they're just probing and other times they haven't
6 thought about it as much they would after the argument was over
7 and they sit down and they read the cases. And how do I slice
8 and dice comments in oral argument to know which of those
9 multiple categories something can be in?

10 MR. ESSERMAN: I agree with Your Honor, I just wanted
11 to comment on it, you've got to wait for the opinion or at
12 least look at the opinion when it comes down -- when and if it
13 comes down before you can really do anything because as Your
14 Honor knows, Your Honor may ask the question that indicates one
15 thing and completely rule the opposite. And I understand that.
16 It was just a very telling comment to me by Judge Sack and it
17 would have been consistent with everything he's ever written
18 that I've ever read that he would hold that future claimants
19 would not be bound. But that assumes that he's going to be
20 consistent with his other opinions, which I think you have to
21 look at.

22 THE COURT: Then there is room for me to try to make
23 a judgment as to whether the appellate judge is really
24 telegraphing the way he's thinking as compared to being the
25 devil's advocate?

1 MR. ESSERMAN: Your Honor, I would not urge that on
2 this Court, I think that that's a -- that would be -- I think
3 it is -- it should be of interest perhaps to the Court but I
4 don't Your Honor ought to base any ruling on that. I think
5 Your Honor has to base his ruling on current decisions and as
6 Mr. Jakubowski quoted, and as I'm quoting to you Supreme Court
7 decisions, I think that those and -- and due process decisions,
8 I think that that's the safer -- that's the safer play.

9 Of course we don't have an opinion from the Second
10 Circuit. We don't what they're doing, we don't know what their
11 hold -- what they're really going to hold, we don't know
12 whether they're going to make some broad policy arrangement or
13 decision because Chrysler was in fact a shut down company in
14 which nobody was working, everyone had been thrown out of work,
15 the plants had been shuttered, every one of them. They stopped
16 production; it wasn't like a GM which is an operating business.
17 Chrysler was not an operating business; Chrysler was shut down
18 and if Fiat didn't come to the rescue, it was going to stay
19 shut down.

20 So we don't know exactly what is going through the
21 Court's mind there other than saving 30, 40,000 jobs it may
22 have been more for the Chrysler Company, which is frankly -- I
23 would say GM has some similarities there because there's a
24 reason the Treasury is here. It's not just because they are a
25 commercial lender; this is highly unusual. We all recognize

1 that, we all know that the stakes are just not a loan to a
2 corporation that this is -- this had been one of the more
3 important companies in American history and to the American
4 economy and that cannot be ignored. The Treasury wouldn't be
5 doing what they are doing. Reminded of a phrase made by a guy
6 named Charlie Wilson, who a few people off to my right I'm sure
7 know but probably nobody else, and this isn't the Charlie
8 Wilson of Charlie Wilson's war, he's a former --

9 THE COURT: I saw the movie if that's the one.

10 MR. ESSERMAN: I did too; different Charlie Wilson.

11 UNKNOWN SPEAKER: He was secretary of defense, Your
12 Honor.

13 MR. ESSERMAN: He was secretary of defense --

14 THE COURT: Probably a different war too.

15 MR. ESSERMAN: Yes, Secretary of Defense under
16 Eisenhower and he says "For years I thought what was good for
17 our country was good for General Motors and vice versa". And
18 of course President Obama said the same, paraphrased it, he
19 actually thought he was quoting it but I actually quoted it.

20 THE COURT: Not without knowing the name of the guy
21 who saw that I'm old enough to remember that.

22 MR. ESSERMAN: Well, unfortunately -- I am, too,
23 although I look much younger. Strike that from the record,
24 please.

25 Anyway, Your Honor, this has been a long two days;

1 it's been a hot two days too. We recognize the issues and
2 truly the weighty issues that Your Honor has to wrestle with.
3 Nobody would like to be in your seat right now. I understand
4 the pressures, both political, national/international to
5 approve this -- approve this sale.

6 I'm officially telling you that I'm resting on my
7 papers, but I certainly can understand a decision whereby you
8 try and reconcile some of these issues and approve a sale. But
9 carve out certain things: carve out the issues of future
10 claims in which we have testimony that that's not material to
11 the company and that the company couldn't handle these claims
12 without a problem -- without a problem financially. We had
13 testimony from the CEO of GM on that. Thank you very much.

14 THE COURT: Thank You. Ms. Cordry, I think you're up
15 on deck but I think some of the things you were going to say
16 we're pretty ably handled by the two guys there.

17 MS. CORDRY: All right.

18 THE COURT: Come to a mic if you would, please.

19 (Pause)

20 MS. CORDRY: As I suggested earlier today that we are
21 still trying to talk to Treasury and the debtors to resolve
22 these issues and we've had some more discussions -- true,
23 everyone's been popping in and out of the door every few
24 minutes.

25 THE COURT: But the truth that has preoccupied us.

1 MS. CORDRY: Yes.

2 MS. CORDRY: Good. Better than watching me go in and
3 out. I have talked to Treasury, we are -- have another set of
4 proposals on the table. I indicated that because there are
5 forty-five odd attorneys general on these papers and staff and
6 in order -- the discussion's at a point where that I wanted to
7 talk to them some more before I could make a commitment --

8 THE COURT: Would it be helpful if I put you behind
9 Mr. Richman tomorrow?

10 MS. CORDRY: Exactly. So that's what we discussed is
11 that I'd prefer go in the morning. Thank you.

12 THE COURT: Sure. Thank you. Who's next?

13 MR. KENNEDY: I believe we are, Your Honor.

14 THE COURT: Okay, Mr. Kennedy, come on up, please.

15 (Pause)

16 MR. KENNEDY: Good evening, Your Honor, Tom Kennedy,
17 the IUE-CWA, the steelworkers and the operating engineers. I
18 want to join my colleagues in expressing appreciation to the
19 Court for the time and attention you've paid to these matters,
20 for your obvious preparation and for the concern that you've
21 expressed for the participants.

22 The numbers that are involved in our programs I want
23 to share with you just to again frame the magnitude of the
24 problems that we think the Court needs to deal with. There are
25 26,500 IUE represented retirees. There are 4,000 USW

1 represented retirees. Counting the dependants of those
2 individuals who are involved in the health programs that
3 General Motors is seeking to terminate, we have 47,000
4 Americans.

5 We've presented a number of their statements today; I
6 think they speak eloquently to the human cost that would be
7 involved in the benefit terminations and modifications that
8 have been urged by General Motors. But we think there are
9 critical issues in this case, legal issues. Not just the human
10 cost that we think is so hot.

11 May a creditor with substantial post retirement
12 health benefit obligation choose to sell its assets through a
13 363 process when one of the express purposes of that process is
14 to deprive the participants of the otherwise applicable
15 protections of Section 1114? Can a creditor who opts for a
16 Section 363 sale proceeding in order to defeat the rights of
17 some, but not all, of its unionized retirees sell those assets
18 free and clear under Section 363(f) of the Section 7 rights of
19 those retirees? And finally of the retirees represented by the
20 objecting unions --

21 THE COURT: Stop, Mr. Kennedy. Section 7, what did
22 you mean by that?

23 MR. KENNEDY: What I mean by that is that there's
24 been quite a bit of discussion this afternoon about the meaning
25 of the kinds of interests that are dischargeable in effect

1 under -- 363 that -- 363(f). And in our view, it's important
2 for the Court to reconcile the rights under 1114 with 363. And
3 in our view the rights under 1114 would survive a 363(f)
4 transaction and that the participants whom we represent should
5 be entitled to exercise their 1114 rights against both Old GM
6 and New GM.

7 THE COURT: I understand that argument, but I thought
8 you said Section 7 rights, and I don't know what you mean by
9 that.

10 MR. KENNEDY: No, I did not. I use that phrase so
11 often as a labor lawyer I may have fallen into it, but I didn't
12 mean to. I meant to say --

13 THE COURT: Is that an important labor law context?

14 MR. KENNEDY: Yes, that would be --

15 THE COURT: Are we -- is it just like -- one of the
16 provisions of the Taft-Hartley Act?

17 MR. KENNEDY: Yes, it is, the heart of the Taft-
18 Hartley Act from the point of view of union members is Section
19 7; it protects the right to form, join and assist labor
20 organizations.

21 THE COURT: Oh, Okay.

22 MR. KENNEDY: I don't believe it has anything to do
23 with this proceeding.

24 (Laughter)

25 THE COURT: Okay.

1 MR. KENNEDY: Certainly not the way the employers
2 have been acting.

3 THE COURT: I had something so long ago that I don't
4 claim any remaining expertise with it, assuming that my
5 professor thought I once did.

6 MR. KENNEDY: I'm sure he did, Your Honor, I 'm sure
7 you did well and any questions I'd be happy to answer but --

8 (Laughter)

9 MR. KENNEDY: -- from the point of view of the
10 Bankruptcy Code, which is what we really focus on today, we do
11 think that Section 363(f), the interests that are dischargeable
12 under it, do not include rights under Section 1114. And then I
13 think you have to ask whether the retirees represented by our
14 unions have been treated fairly and equitably in this process,
15 and since they manifestly have not what are the consequences of
16 that to this proposed sale?

17 Now a number of people had mentioned to you, and I
18 think it's the right thing to do, that we start any statutory
19 analysis with the words of the statute itself. And 1114 could
20 not be clearer that it was intended to protect in ways unlike
21 almost any other interest under the code the rights of retirees
22 to continue their medical benefits unless there are certain
23 procedures that are followed. In fact, what we think is very
24 significant in terms of harmonizing 363 and 1114 is Subsection
25 (e)(1), the very first operative section of the statute, which

1 begins "Notwithstanding any other provision of this title"
2 there is an effort by Congress to elevate 1114 other -- over
3 other aspects of the code and in our view specifically over
4 other general sections of the code like 363.

5 The second part of the statutory analysis under 1114
6 is to observe -- and you cannot read the statute without
7 observing that it is based on the notion of fair treatment,
8 full disclosure, equal treatment to the retirees that are
9 involved. The only proposal that a trustee is permitted to
10 make, the debtor-in-possession is permitted to make, is one
11 that "under Section (f)(1)(A) that assures all creditors, the
12 debtor, and all of the affected parties are treated fairly and
13 equitably". That's extraordinary language; not just the
14 participants, but the creditors, the debtor and all of the
15 affected parties. Clearly the IUE-CWA, USW and IUOE retirees
16 have not been treated fairly and equitably, there are others
17 who have been preferred over them; could not pass the merits of
18 1114 the treatment to which they have been subject.

19 Section (f)(2) states that the trustee, before he can
20 impose -- before he can come to court and ask that there be a
21 termination of retiree benefits he has to demonstrate, having
22 conferred in good faith that attempting to reach mutually
23 satisfactory modifications of retiree benefits. There's been
24 no good faith negotiations between these parties. And what you
25 find if you look further into the statute that in order to

1 achieve a termination of benefits the -- the company has to
2 show that the union involved, in a unionized situation, has
3 refused to accept any proposal they had made without good
4 cause. And in our view the discrimination against the splinter
5 unions, as opposed to the IUE -- the UAW members would
6 inevitably establish good cause to reject any proposal the
7 company made which had the effect that we're sitting here today
8 and observing.

9 And I would notice, Your Honor, that it's not only
10 our observation that the unions would have good cause to reject
11 this proposal, but in evidence there's an e-mail from the labor
12 relations representatives of General Motors in which they
13 inform the upper leadership, including Mr. Henderson, that the
14 unions would not accept an offer which provided only twenty
15 percent return to them from what their book value had been on
16 the OPEB obligations. This offer was thirteen percent, there
17 is no chance that the unions would accept that offer, they had
18 good cause to reject it; this approach could never withstand
19 1114.

20 Then I wanted to make an observation is that under
21 (f) -- excuse me, (g)(3), Your Honor, any modification that
22 would be approved has to "assure that all creditors, the
23 debtor, and all of the affected parties are treated fairly and
24 equitably", which is -- harks back to something earlier in the
25 statute, but this section ads "and is clearly favored by the

1 balance of the equities". So equities would have to balance,
2 as well, in favor.

3 Now if you look at that statutory history it's
4 interesting because it is precisely condemns what General
5 Motors is attempting to do. Senator Heinz, when 1114 was
6 enacted, stated that Congress was also concerned over the
7 treatment of retirees after a company filed for bankruptcy.
8 There's one sentence I want to use here, "Once the retirees
9 lost their benefits they were forced by the bankruptcy law to
10 go to the end of the line of creditors and patiently wait for
11 years to get a small cash settlement." That notion of
12 translating retirement benefits into a claim in bankruptcy
13 court as an unsecured creditor is precisely what Congress was
14 attempting to preclude through 1114. Senator -- excuse
15 Representative Edwards, at the same time this bill was being
16 passed, said it is important we pass this bill to give retirees
17 peace of mind by removing the possibility of any sudden and
18 unilateral termination of retiree health benefits. They are
19 suddenly and unilaterally terminating health benefits for
20 25,000 of the 30,000 individuals that are covered under the
21 IUE-CWA and other unions.

22 There is simply no suggestion in the statute, 1114, or
23 its legislative history that these retiree protections can be
24 avoided in a Chapter 11 proceeding by the simple expediency of
25 disposing of the assets of the debtor through Section 363

1 instead of having the debtor accomplish it on its own. And
2 what we know here, and it's important to remember this, is that
3 this is not suspicion on our part, that the IUE-CWA OPEB in
4 particular was a motivating reason for this 363 transaction.
5 If you look at Exhibit Raleigh 13, Raleigh 14, both of them are
6 internal reports by General Motors to its labor relations and
7 top management people in which they specifically say we are
8 seeking to leave IUE in OldCo. They mean by that they want to
9 turn the IUE OPEB obligation from a enforceable benefit into a
10 claim that retirees can wait years to enjoy.

11 Under item 16, under Raleigh Exhibit 16 that's a May
12 1st review with the U.S. trustee at page 4 under the listing GM
13 Liabilities to New GM, "leave behind splinter group health/life
14 obligations". That was one of the reasons they selected 363 as
15 the forum under which this bankruptcy proceeding would be
16 conducted. That was repeated on April 15th. April 15th, very
17 important document, it's number 3 under Mr. Henderson's
18 exhibits. It's a specific analysis, it's a long document, 107
19 pages, exhaustively analyzing should we go 363, should we try a
20 pre-packaged planned bankruptcy. Under the 363 advantages, it
21 states "IUE and other splinter group obligation may be more
22 addressable in 363." You could not be clearer that 363 was
23 chosen specifically to defease our clients of their rights to
24 their health benefits and to do it in a manner which did not
25 have to comply with 1114.

1 THE COURT: Are you saying that was the purpose or an
2 effect?

3 MR. KENNEDY: I'm saying it was a purpose. I think
4 there's one other document which is very --

5 THE COURT: Dominant purpose or an incidental
6 purpose?

7 MR. KENNEDY: More than incidental, I think dominant,
8 and I will tell you exactly what I mean by that. If you look
9 at Mr. Worth's affidavit, Exhibit F, is the board of directors'
10 report by his firm to the board of directors of General Motors
11 on May 31st, 2009, the meeting at which they approved the
12 filing of the bankruptcy, he identifies the capital structure
13 of the new company once they approve the 363 application. In
14 that description of the new company they call out specifically,
15 and the only obligation that they're being able to dump through
16 the 363 that they call out specifically, is the gain from the
17 elimination in non-UAW OPEB. If this were not a dominant, if
18 this were not a motivating factor in their deciding to use 363,
19 it would not have been the only discharged obligation mentioned
20 in that report to the board of directors at the critical
21 meeting by individuals who had opportunity to know and that
22 decided what the important elements were going to be. And I
23 asked Mr. Worth, I said did you include this particular item on
24 this sheet of paper it's a bullet point sheet of paper, it's
25 not a string cite, there's about probably a hundred words on

1 it, and eight of them are "gain from the elimination in non-UAW
2 OPEB". It's clear that this was an important and a motivating
3 influence.

4 THE COURT: Please, Mr. Kennedy, what's the citation
5 of source for what you were just talking about?

6 MR. KENNEDY: Exhibit F, the Worth affidavit, it's a
7 board of directors report 5/31/09. I will get you a page
8 citation before we leave today; it's not one of my exhibits and
9 I don't have it with me, Your Honor.

10 It's important to note in evaluating the relationship
11 between 1114 and 363 that despite the worried tales of ugly
12 negotiations these people were talking to themselves. Who is
13 kidding who? Mr. Henderson is the CEO of Old GM, he's the CEO
14 of New GM; that's true for every single executive. It's true
15 for most of the workers, it's true for most of the assets.
16 They carefully selected the people they were throwing
17 overboard, fine. But that doesn't make it tough negotiations
18 between completely independent and arm's-length parties. To --
19 even if you could imagine a circumstance in which the
20 commercial reality was such that a 363 transaction had to occur
21 and there were unionized OPEB individuals who were affected by
22 that, if it were truly arm's length, truly independent
23 relationship, that would be one level of analysis.

24 Here where we do not have an arms-length independent
25 relationship, we have as seamless a transition as the -- all of

1 the participants in this party could make it, it's particularly
2 inappropriate to suggest that they had a right under 363 to
3 ignore their otherwise applicable obligations under 1114. The
4 deliberative process in this case, in the months of April, May
5 and June, were specifically and repeatedly intended to
6 accomplish the elimination of splinter union OPEB and the only
7 explanation that's been given for that is Mr. Wilson's candid
8 acknowledgement -- yeah, I think Mr. Henderson, to be candid,
9 said more or less the same thing, but he was -- I thought Mr.
10 Wilson was clearer that they used a doctrine of commercial
11 necessity. If they didn't have to keep a liability, they
12 wouldn't do so.

13 Well, you know, that's a great doctrine from the
14 point of view of the individuals who are going to end up
15 running this company. But the doctrine of commercial necessity
16 and the obligations under 1114 with its repeated and specific
17 obligations of good faith are simply incompatible. That
18 commercial necessity can't be an eraser which eliminates all of
19 the rights under 1114. The value of the offer made to IUE-CWA
20 retirees, also USW and IUOE, is shockingly low. It's thirteen
21 percent of the value that GM admits for their OPEB as of
22 December 31st, 2008.

23 And that itself is exaggerated. The actual recovery
24 by these participants could be much lower. Mr. Miller said an
25 interesting thing in his presentation. I wrote it down, "We

1 did not leave them with nothing". Well, that's not true; they
2 did leave them with nothing. And although I don't want to get
3 too deeply into the weeds about the details in a particular
4 health plan I think a few details will illustrate just how much
5 nothing in fact this plan constitutes. First it's the position
6 of the unions, and always has been, that their rights to
7 retiree health coverage are vested, uncancellable by the
8 company.

9 In fact the evidence shows in the Raleigh exhibits
10 that in October of 2008, only eight months ago, General Motors
11 agreed to fund 2.455 billion for an IUE VEBA. Essentially the
12 same deal that had been set aside for the UAW. We had that
13 agreement in place, in fact, as our brief reports; they advised
14 Congress in December of 2008 that they had reached an agreement
15 with the IUE on the creation of a VEBA. They repudiated that
16 agreement in January, and they did because UST, U.S. Treasury,
17 had imposed obligations on them that were inconsistent with the
18 funding that had been agreed to during 2008.

19 My point beyond that is to observe that if they
20 really had a claim that these rights to OPEB benefits were
21 cancellable or voidable by them, they would not have agreed to
22 fund two and a half billion dollars into an IUE-CWA OPEB VEBA.
23 So let's look at what in fact they're giving to our retirees.
24 Well, of the 26,500 IUE retirees, approximately 20,000 are just
25 eliminated. Benefit over, see you later. The other 6,000 are

1 being, because they're pre sixty-five, are being given the so-
2 called salary plan. But the salary plan has the following
3 provision: NewCo." reserves the right to amend, modify or
4 terminate the plan at any time.

5 They want and have insisted that the IUE-CWA concede
6 that even this crummy plan is terminable at will by General
7 Motors at any point. They could do it January 1, 2010. The
8 value, the thirteen percent value they've ascribed to their
9 offer, that 470 bill -- million, rather, 470 million, assumes
10 that the benefit stays in place throughout the period of time
11 that any pre sixty-fives remain short of that age and second,
12 assumes full participation by IUE-CWA members.

13 In fact, neither is true. The company has a right to
14 cancel it at any time and the second is that the benefits are
15 such that it is a programmed failure plan. Let's remember how
16 this works. There are caps on company expenditure, low caps.
17 Caps, in fact, from 2006 of 4,000 dollars an individual. Now,
18 that 4,000 dollar cap is multiplied by the number of
19 participants. Let's say we start with 6,000 participants. You
20 can do the arithmetic, 6,000 times 4,000 comes up with a
21 number. If they can drive the number of participants down to
22 3,000, their cap for a year is only 3,000 times 4,000.

23 Normal medical inflation will make this plan more
24 expensive for participants. In fact, as it is now, the first
25 8,000 dollars for retirees comes out of the member's pocket.

1 They then go into a zone of coverage. But the first 8,000
2 comes out of their pocket. Our members can't afford 8,000
3 dollars up front as medical expenses when right now their out-
4 of-pocket medical expense is probably around the order of 800
5 dollars a year under the current plan. To go to 8,000 a year,
6 though, our people won't take the plan and as we indicated in
7 the declarations that we submitted, that will be a significant
8 number of people.

9 Once people start dropping out of the plan it's the
10 healthy ones that don't take the insurance. The people who say
11 "well, gee, 8,000 is a lot of money, but it's better than the
12 50,000 I'm going to incur in medical expenses this year", will
13 drive the cost of that plan sky high. And it is specific in
14 this offer in a way I've never seen before. I must have
15 evaluated 500 company proposals over the years; I've never seen
16 one say, as this one does, that you must agree in advance that
17 every dollar over 4,000 in any given year will be recaptured by
18 the company by making the plan terms worse the following year.
19 So if you track this out, seven or eight years from now you
20 would have to pay 50,000 dollars in premiums to get 4,000
21 dollars in coverage. This plan is a sop, it only reflects the
22 reality that there are political considerations, as the company
23 acknowledged, they wanted to make it look like they were doing
24 something, in fact they're doing nothing. There is no
25 protection for IUE-CWA steelworker or operating engineer

1 retirees under this proposal and there's no way you can take
2 this 4,000 dollar cap and make it seem a real health plan
3 because it's not.

4 The treatment afforded to IUE-CWA steelworker and
5 operating engineer retirees is dramatically worse than other
6 similarly situated unsecured creditors of General Motors.
7 Let's look at the interplay between Treasury and General Motors
8 about how the IUE-CWA and other union people ended up where
9 they were. The story is, I suppose it's correct, is that at
10 some point Treasury said well, we're not going to get too far
11 into this, we're going to take a group of obligations that are
12 all unfunded, that collectively are 7.9 billion dollars, and
13 we're going to say to General Motors we want you to reduce
14 those by two-thirds, okay? General Motors looks at that; one
15 of the components is executive SERP, another component is
16 salaried life. Most of the components, four or five of them,
17 are for salaried executive individuals. Now we know, because
18 of the Sprague case, that all of them are cancellable by the
19 company at will. General Motors had the right to terminate
20 each one of those programs. The same is not true, in our view,
21 with respect to the splinter union health and life. But
22 because none of them are funded, Treasury apparently concluded
23 that they would take that 7.9 billions dollars and they would
24 determine that the two-thirds would be applied as against that.
25 What Mr. Wilson told them, I quoted his testimony, "We told GM

1 to cut two-thirds; we told them to figure out how to do it."

2 That's Mr. Wilson's testimony.

3 The mechanics on it are reflected by Mr. Henderson's
4 Exhibit 12 -- excuse me, I believe it's -- it's the -- yeah,
5 excuse me, it's Henderson 14 where the -- and you've seen this
6 chart before, Your Honor, where they charted out the total of
7 7.9 billion and the percentage deductions that would be
8 applicable to each, and I'm referring to page 2, as I said, of
9 Exhibit 14 of the Henderson deposition. Retiree life was cut
10 sixty-six percent. Salaried retiree health care, in the first
11 iteration to Treasury by General Motors, was cut zero, no cut
12 at all. Executive nonqualified pension, that's the SERP, was
13 cut thirty-two percent. Executive life, Treasury told them
14 they had to dump that, wasn't vested, no claim to continuation,
15 that they eliminated. The splinter unions on the other hand,
16 their health care was cut eighty-four percent. Eighty-four
17 percent. Now the package of cuts came to sixty-two percent,
18 and this -- this is pretty late day, this is June 4th, by the
19 way. On June 4th the e-mail was sent, correct -- I should say
20 responding to the fact that the sixty-two percent was rejected
21 by Treasury. Treasury said no, we said two-thirds and we meant
22 it, you need to go back and get that extra -- that extra five
23 percent, from sixty-two to sixty-seven. Now that five percent
24 represents million dollars of value in the benefit program.
25 The executives of General Motors --

1 THE COURT: The incremental five percent is --

2 MR. KENNEDY: It's four hundred million, sir.

3 THE COURT: Four hundred million additional?

4 MR. KENNEDY: Yes, it moves the cuts, if you want the
5 exact numbers, from 4.8 billion to 5.2 billion. Started with
6 7.9, they had proposed 4.8, Treasury said it's got to be 5.2.
7 That four hundred million, the executives of General Motors
8 took every penny of it out the salaried health care, but more
9 importantly they took it out of the splinter union health care.
10 Because by lumping them into the same program, that program I
11 told you about a moment ago, the -- what they did is they took
12 that 4,000 dollar cap and reduced it for the year 2010 and
13 going forward so that now medical inflation will bump up
14 against the lower cap and that allowed them the present value
15 of the number at a smaller rate and allowed them to put an even
16 worse plan out on the table. A worse plan that as time goes on
17 will get worse and worse and worse till the point rapidly where
18 there is no health coverage at all for the 47,000 people that I
19 mentioned we represent. That's wrong. And there was not a
20 union member, not a union leader, not a union person involved
21 in those negotiations or decisions.

22 One of the points of 1114 is to be able to say to the
23 unions and the representatives and the participants here's what
24 the company wants to do, be part of the process. If you have a
25 problem with it, if you think it's unfair the bankruptcy court

1 will hear you and will give you relief, will give you the
2 opportunity to demonstrate that it's unjust. We don't have
3 that. We heard the head of Ajax, what was -- that outfit is,
4 saying that within a week from now they were going to start an
5 1114 proceeding. Now when they do that we'll be dealing with
6 Old GM that has 1.25 billion dollars in cleanup money that's
7 well spoken for and shares and warrants that won't be subject
8 to cashing out for some time -- for some years.

9 There's no room to continue the IUE-CWA health
10 benefits under Old GM; they know it. They know the 1114 will
11 be a sham, but they intend the sham 1114 traction because --
12 transaction because they drained the assets out of New GM --
13 excuse me, out of Old GM and put them into new -- into New GM.

14 Now the other thing that I want to call to your
15 attention, Your Honor, is that -- the alleged equity of
16 including union retirees with salaried retirees for purposes of
17 a health ban -- plan is all set by one critically important
18 fact. On January 1, 2009, just six months ago, the salaried
19 retirees who had -- had their insurance taken away were
20 provided a 300 dollar a month pension increase from the salary
21 pension fund.

22 THE COURT: Yes, I understand that, but your
23 opponents say that that didn't come from GM; that came from a
24 qualified pension trust.

25 MR. KENNEDY: That's true.

1 THE COURT: It was overfunded.

2 MR. KENNEDY: I believe it came from something called
3 the salaried retirement plan, the SRP, I think that's correct.
4 I don't think it's overfunded by the way, Your Honor, it's well
5 funded, but I don't think it's overfunded. The hourly help --
6 the hourly pension plan, in our view, could similarly sustain a
7 pension increase to our members, the -- there are carrying
8 costs involved with any pension increase, there's an
9 amortization period and the amortization period would have some
10 impact, but from the point of view of the members, from the
11 point of view of the individuals that no longer have insurance,
12 were given money with which they could purchase insurance, the
13 fact that we can say well, don't worry about that, it didn't
14 come from GM, you're not being treated unequally because that
15 came from the salaried pension plan, I don't think that's a
16 very convincing response. They've made no effort to
17 demonstrate that that same 300 dollars couldn't be paid from
18 the hourly pension plan.

19 And the reason I bring it up is to demonstrate that
20 their suggestion that there is a parity between these groups,
21 salaried and non-UAW unionized, is false, untrue and a lie. It
22 was not a parity; it was dramatically different because they
23 provided alternative funds with which to purchase insurance.

24 I want to look at two other pieces of the General
25 Motors conduct in this. They've made the -- they and as I

1 said, Mr. Wilson, contend that there is no commercial necessity
2 for bringing on the IUE-CWA and other non-UAW union OPEB. Well
3 let's look at that principle applied in other situations. If
4 we look at the SERP obligation, the SERP obligation that they
5 agreed to assume by New GM is 730 million dollars. They didn't
6 have to assume that. More than three-quarters of that is for
7 retired executives. Not for people currently working for
8 General Motors. There's no distinction between covering our
9 retirees who are no longer currently working for General Motors
10 and retired executives who are no longer working for General
11 Motors. There's no reason why one would be preferred over the
12 other, except there was an act in this little drama that
13 probably led to it.

14 Mr. Henderson, legitimately concerned over his group,
15 sent an e-mail to Mr. Rattner lobbying, advocating for two
16 types of insurances to be maintained. The first was the SERP
17 plan and the second was the salaried health plan. There were
18 no similar e-mails lobbying for continuation of unionized
19 benefits. We weren't at the table; we didn't have the
20 opportunity to make that claim. Had they been forced to go
21 through an 1114 proceeding before any of these benefits were
22 changed that wouldn't be true, we'd have had notice,
23 opportunity to be heard, standards applied and the
24 demonstration that what was going on was fundamentally unfair.

25 Now the Court has mentioned on several occasions the

1 Chrysler case, and I just want to address that for a minute.
2 The Chrysler case, in our view, has little to teach us about
3 this particular transaction from our perspective. I'm sure
4 there are things that are overlap well between Chrysler and GM,
5 but from our perspective, which is to say what happens to non-
6 UAW members that don't have opportunity to participate in a
7 VEBA. There were no similar union objections in Chrysler.

8 Chrysler did not, was not asked to, and the Chrysler
9 Corp was not asked to and did not rule on the relationship
10 between 1114 and 363. What Judge Gonzalez did say is that even
11 after a court determines that the criteria of Section 363 had
12 been met, that has not happened here and we hope it does not,
13 but if it were to be true, the Court must then determine
14 whether the elements of Section 363(f) are satisfied. And in
15 our view the free and clear of any interest in such property
16 cannot apply to interest that the unions that represent members
17 have under 1114; they are contractual, statutory under the
18 Bankruptcy Code, statutory under ERISA, they are an important
19 web of deeply, deeply significant interests that these
20 individuals have and to have them washed out is fundamentally
21 inconsistent with the language of 1114 that says that
22 notwithstanding any other portion of the code these protections
23 will apply.

24 Now I just want to touch on two things that were said
25 by Mr. Miller. Mr. Miller used the word "jealousy". And

1 that's not true, Your Honor. It's a misreading of everything
2 we stand for. Everything the unions I represent have brought
3 to you today. We care not that the UAW members have gotten
4 something in exchange for their OPEB. We're delighted that as
5 retired Americans they're going to have the opportunity for
6 some health care protection. Our concern is that we were not
7 given that same opportunity. It's not jealousy; this isn't a
8 party, this isn't high school. These are people being deprived
9 of fundamental rights. Rights that in the absence of the
10 insurance will affect not only them but their families and for
11 decades.

12 There was also a notion of conspiracy, now I think
13 that was chosen as a word, because I believe Mr. Miller choses
14 (sic) his words carefully because he wanted to minimize the
15 extent of the unions' complaint, the notion that we saw some
16 vast conspiracy in which we were somehow deprived of benefits
17 and we're suggesting that nameless, shapeless forces were
18 somehow behind it. We don't need to do that, we've got their
19 documents. Their documents prove that through -- that the
20 ability to eliminate our OPEB was a substantial motivating
21 force behind selecting the 363. If he wants to call it a
22 conspiracy, be my guest, but it's not nameless and it's not
23 faceless, we know who it was, we know when it happened and we
24 who did it. And who were the victims, we were. It's unfair
25 and we ask the Court if you would -- to not approve this sale

1 as it's currently constructed. If it is approved, we ask that
2 you approve it conditionally upon their satisfying the rights
3 under 1114 -- or their obligations, I should say, under 1114
4 with respect to our members.

5 And finally that if a sale does go through, in our
6 view any 1114 process would extend to both Old GM and New GM,
7 we should have the opportunity to demonstrate a week from now,
8 when they start the 1114 proceeding -- procedure that they
9 promised that we have a right to all of those assets as an
10 opportunity to demonstrate that the only fair result is one in
11 which we maintain our benefits. Thank you, Your Honor.
12 Otherwise I rely on my papers.

13 THE COURT: Okay. Fair enough. Who do we still have
14 for tonight?

15 MR. MCRORY: Russell McRory for the Greater New York
16 Auto Dealers' Association.

17 THE COURT: Fine, Mr. McRory.

18 MR. MCRORY: Good afternoon, Your Honor, I'll be
19 short. My name is Russell McRory from Robinson Brog Leinwand
20 Greene Genovese and Gluck on behalf of the Greater New York
21 Automobile Dealers' Association. Your Honor, the association
22 does not oppose the sale. The association indeed supports and
23 looks forward to GM's revitalization. The association
24 recognizes and appreciates that GM has treated its wind-down
25 dealers much better than Chrysler treated its rejected dealers.

1 And the association also applauds the appeals process
2 instituted by GM in contrast to what Chrysler has done with a
3 lack of an appeals process for its rejected dealers.

4 There is however one issue of concern to the
5 association. That concern is that the approval of the 363 sale
6 involves the ratification of conduct by the debtors that is
7 deemed unlawful by New York's Franchise Motor Vehicle Dealer
8 Act and impermissible under the Federal Automobile Dealers' Day
9 in Court Act. That conduct is this, that the debtor has
10 coerced its dealers to sign away their state law protections
11 and federal law protections through the execution of
12 participation in wind-down agreements. This was done at the
13 proverbial point of the gun. Dealers were told to sign these
14 agreements or else they would be rejected and end up exactly
15 like the Chrysler's rejected dealers.

16 This conduct violated the Federal Automobile Dealers'
17 Day in Court Act, which proscribes the manufacturer from using
18 intimidation and coercion in its dealings with its franchisees.
19 Virtually all fifty states, including New York, have similar
20 proscribe -- laws proscribing such conduct. I realize of
21 course, Your Honor, that in the usual bankruptcy case the
22 debtors will use their powers to assign or to assume or reject
23 contracts, to extract concessions from its contract
24 counterparties and then assume those contracts as amended.
25 However this is not the usual case.

1 In this case, Your Honor, as I mentioned above, the
2 Automobile Dealers' Day in Court Act, as well as state laws,
3 have a say in the matter. The usual contract counterparty is
4 not protected by such laws. And it is not without irony, Your
5 Honor, that the -- that Chrysler did not try to do this in its
6 bankruptcy. Chrysler did not attempt to extract concessions
7 from its continuing dealers as a -- in exchange for being
8 assumed and not rejected.

9 THE COURT: Pause please, Mr. McRory, you said half a
10 second ago that GM is trying to do better for its folks than
11 was done by Chrysler Corporation; it's kind of sounding like no
12 good deed goes unpunished. I mean, I can understand how you'd
13 be pretty upset if Chrysler had just -- excuse me, if GM had
14 just rejected all of these folks. And it's giving them a soft
15 landing and you're saying that because it did, but because it's
16 saying that we're giving you a soft landing under certain
17 terms, it should be penalized for that.

18 MR. MCRORY: Your Honor, these are two different
19 groups of dealers. The -- it was the rejected dealers in
20 Chrysler that were just rejected. Here in -- and GM is giving
21 a soft landing to its wind-down dealers, the dealers that
22 otherwise would have been rejected.

23 THE COURT: So you're not complaining about the
24 terminated group --

25 MR. MCRORY: No.

1 THE COURT: -- dealers, you're complaining about
2 those who have an even better deal which is that they're
3 continuing.

4 MR. MCRORY: They are continuing, Your Honor, however
5 as I've to draw the distinction that in the Chrysler case the
6 continuing dealers had their franchise agreements assumed
7 without -- without amendment and without being put through the
8 course of process of having their agreements amended.

9 THE COURT: But of course if they hadn't been amended
10 then we have a bloated dealership structure that addressing
11 which was an important element of restructuring GM.

12 MR. MCRORY: No, it doesn't change the fact, Your
13 Honor, that the wind-down dealers are eventually leaving GM, it
14 doesn't change the fact --

15 THE COURT: No, but for those who are going forward
16 there was a decision, as I understand the evidence, that you
17 had to amend those agreements or you wouldn't be in a position
18 where you could assume them.

19 MR. MCRORY: Your Honor, that is not -- that is not
20 the case. As I understand it, GM could simply have assumed the
21 continuing dealers franchise agreements exactly as Chrysler did
22 for its continuing dealers. There was no require -- there was
23 no requirement that they be amended first through a
24 participation agreement.

25 THE COURT: Go on, I'll check the record on that.

1 MR. MCRORY: Sure. And, Your Honor, as evidence of
2 that I just cited exactly what happened to Chrysler. That is
3 what happened to Chrysler. The Chrysler dealers who were
4 continuing had their franchise agreements assumed as-is. The
5 specific incit --

6 THE COURT: Okay. The problem I'm having, Mr.
7 McRory, is it seems to me that GM's program both for the
8 continuing dealers and for the terminated ones was more fine-
9 tuned to both sides' needs and concerns than Chrysler was. And
10 it sounds to me like GM, if I were to accept your arguments,
11 would be penalized for that

12 MR. MCRORY: No, Your Honor, I don't think it's a
13 matter of being penalized, I think it's a matter of -- that
14 we're dealing with -- we're not dealing with the same situation
15 where GM is either accepting or -- either assuming or rejecting
16 the continuing dealers -- dealer agreements. They're doing an
17 extra step. And that is that extra step of causing an
18 amendment to those agreements to be signed first before
19 assuming those agreements. That is the sole focus of what I'm
20 talking about now.

21 And the reason why I'm focusing on that -- those
22 amendments to the continuing dealers' franchise agreements is
23 because it was brought about through a coercive process. And
24 those were in violation of state law, in violation of federal
25 law. And 28 U.S.C. 959(b) says that a debtor-in-possession

1 must manage and operate its business in accordance and with
2 valid state laws.

3 And -- so the -- essentially, Your Honor, what the
4 association is arguing is that it was a bridge too far, in
5 effect, for GM to not simply assume the -- assume the
6 continuing dealers' franchise agreements, but the bridge too
7 far, and which violated the state dealer laws which are made
8 applicable through 959(b) was to coerce the execution of the
9 participation agreements which took away otherwise their state
10 law rights.

11 And let me emphasize, this is not a challenge to the
12 debtor's right to sell its assets in a 363 sale.. We're not
13 challenging the debtor's rights, generally, to reject contracts
14 or assume contracts in its sound business judgment. What we're
15 challenging is the debtor's post-petition conduct, its post-
16 petition conduct in coercing its dealers in violation of the
17 state dealer laws and the Automobile Dealers' Day in Court Act
18 to rewrite their franchise agreements.

19 Now clearly there's a tension between 959(b) and the
20 Bankruptcy Code. The question is when does a state law have to
21 yield to the debtor's rights under the Bankruptcy Code or when
22 is a debtor obligated to follow those state laws under 959(b)?
23 And the case law cited in our brief includes -- holds that that
24 tension is resolved by looking at whether the debtor's ability
25 to circumvent state law gives that debtor an unfair advantage

1 in the marketplace. And in addition to the cases cited we also
2 list Stable Mews here in the Southern District which cited
3 Butner v. United States for that basic concept.

4 And that is precisely what is occurring here. Ford
5 cannot simply rewrite its dealer agreements in this way.
6 Toyota, Honda, Mercedes and the other import brands cannot do
7 so and indeed, Your Honor, as I pointed out earlier, Chrysler
8 did not do so in its bankruptcy proceeding. In other words the
9 debtors violating of state dealer laws during the pendency of
10 this proceeding has given GM a substantial competitive
11 advantage against every other manufacturer in the marketplace.

12 THE COURT: But the complaint's not coming from Ford
13 or Chrysler or even Toyota; it's coming from people who by not
14 having their dealerships rejected are benefitting from the
15 opportunity to continue to be GM dealers

16 MR. MCRORY: They are benefitting from the
17 opportunity to continue to be a -- be GM dealers, Your Honor,
18 but again it was done at the proverbial point of the gun to
19 sign this agreement or else. And that is the coercive --

20 THE COURT: Mr. Miller, I'm going to give you a
21 chance to reply but --

22 MR. MILLER: Your Honor, I just want to make one
23 statement if I might, Your Honor. Counsel keeps talking about
24 coercion, I would just like to point out, Your Honor, an oral
25 argument, closing argument should relate to the record. There

1 is absolutely no evidence --

2 THE COURT: Okay, yes, but we haven't up to this
3 point and I would like to continue, Mr. Miller, not
4 interrupting each other making the argument. You can certainly
5 point out when it's your turn to reply, which I guess you will
6 be able to do tomorrow, that Mr. McRory has distorted the
7 record or spoken to hoarse the record or whatever.

8 MR. MCRORY: Your Honor, I think it's clear just by
9 the very words of the wind-down agreements and the cover
10 letters from GM that they were told in bold print in those
11 letters that if they did not sign, their agreements would be
12 rejected. So however one wants to look at that, it is the
13 positi -- it is -- you can look at it as coercion or something
14 else, but if you're told sign or your dealer -- or your
15 agreements will be rejected that, in my understanding of the
16 word, is coercion. And those are GM letters and documents that
17 they submitted to every single dealer.

18 THE COURT: Okay.

19 MR. MCRORY: So, Your Honor, to wind up, so to speak,
20 the debtor has gone far beyond simply jettisoning unwanted
21 contracts and assuming the contracts that it wants to assume.
22 In -- what it is doing is rewriting the rules applicable to
23 dealer and factory relationships, rules that every other
24 manufacturer has to adhere to. And that is precisely the
25 situation with 959(b) applies and demands that debtors comply

1 with the same laws that all other manufacturers have to comply
2 with. Thank you, Your Honor.

3 THE COURT: All right, thank you. All right, we
4 covered everybody for tonight? I think so. All right.
5 Tomorrow we have Mr. Richman and then Mr. Parker -- oh, I have
6 duplicates. Mr. Mayer, you would care to be heard as well?
7 Well, you or Mr. Eckstein? I guess you've relieved him at this
8 point.

9 MR. MAYER: Your Honor, if I may, this is a
10 placeholder. Mr. Eckstein said on his piece on some particular
11 issues -- said the committee's piece on some particular issues
12 at the beginning. We are holding a committee call at 8 p.m.
13 tonight. It is possible we will have a short statement
14 tomorrow, and I would like to reserve some time to do that.

15 THE COURT: Why don't we put you in right after Mr.
16 Richman and Mr. Parker. By then you should have a better
17 handle, I would hope, on what you want to tell me.

18 MR. MAYER: Thank you, Your Honor, that would be
19 appropriate.

20 THE COURT: Okay, we'll put it down. And then
21 tomorrow, Mr. Miller, I'll hear rebuttal from you, your reply
22 on all of the folks who spoke after you did today along with
23 comparable opportunities for -- oh, I have indentured trustees.
24 Okay, just --

25 MR. FELDMAN: Your Honor, I don't intend to speak

1 tonight, I'm happy to -- David Feldman, Gibson Dunn & Crutcher,
2 on behalf of Wilmington Trust, the indentured trustee for more
3 than twenty-two billion dollars of bonds in this case. It's
4 our intention to make a brief statement tomorrow in connection
5 with our joinder to the committee's response. I think it would
6 make more sense for us to go tomorrow when as Mr. Eckstein
7 described we'll have a better clarity on where we are in
8 particular with regard to the wind-down budget issue, which is
9 a very central issue to our joinder papers. And as a result I
10 would ask that we be able to follow the committee tomorrow --
11 tomorrow morning.

12 THE COURT: Sure, Mr. Feldman. And I suspect I'm
13 going to get the same request from the other indentured
14 trustee.

15 MR. FELDMAN: I expect you might.

16 THE COURT: I know you're -- I note you're from
17 Kelley Drye but forgive me, I forgot your name.

18 MS. CHRISTIAN: That's correct, Jennifer Christian.

19 THE COURT: Go ahead, Ms. Christian.

20 MS. CHRISTIAN: From Kelley Drye & Warren, we
21 represent Law Debenture Trust Company of New York and we would
22 just make the same request that we be allowed to follow the
23 committee counsel.

24 THE COURT: Sure.

25 MS. CHRISTIAN: Thank you.

1 THE COURT: Sure. Okay. Yes, sir?

2 MR. BACON: Excuse me, Your Honor, my name's Doug
3 Bacon, I'm with Latham and Watkins and I represent GE Capital.
4 We have filed an objection, and we've been -- I've been in the
5 courtroom next door for two days. We have a solution and a
6 stipulation and I just want to make sure I get a place in line
7 at the right point and that I'm not estopped from speaking. We
8 had a settlement with the debtor and I don't know how
9 procedurally you want that layered in.

10 THE COURT: If you think you can state it now and
11 that the debtor thinks it's a good time, I would say let's do
12 it right now or if they prefer tomorrow morning I wouldn't
13 deprive you of the opportunity to do it if you had something.

14 MR. BACON: Thank you, Your Honor, I'll do whatever
15 they prefer.

16 MR. WEISS: Your Honor, Robert Weiss, Honigman Miller
17 Schwartz and Cohn.

18 THE COURT: Sorry, but -- do you have a cell phone in
19 your pocket, Mr. Bacon?

20 MR. BACON: I have a BlackBerry, but --

21 THE COURT: You have -- no, BlackBerries destroy our
22 sound system. Mr. Bacon, your product liability case in --

23 (Laughter)

24 THE COURT: All right, okay. Can I ask you, now that
25 you're not being drowned out, to repeat who are?

1 MR. WEISS: My name is Robert Weiss, I'm with
2 Honigman Miller Schwartz and Cohn, special counsel to General
3 Motors Corporation.

4 THE COURT: Okay, Mr. Weiss.

5 MR. WEISS: You Honor, we have been in negotiations
6 and discussions with Mr. Bacon as well as the creditors'
7 committee. There have been a number of revisions to the
8 stipulations made continuously throughout the day and into this
9 afternoon. I have not had an opportunity to discuss the latest
10 revisions with my client and I'd like the opportunity to do so
11 before we can present a stipulation.

12 THE COURT: Can I ask you then, Mr. Weiss, and --
13 forgive me, did I see you on the aircraft rejection list?

14 MR. WEISS: Yes, you did, Your Honor.

15 THE COURT: Yes, I acknowledge that. Why don't you
16 caucus with whomever you need to caucus with tonight and then
17 put it on the record in the morning, if that's not a problem.

18 MR. WEISS: That'd be fine. Thank you, Your Honor.

19 THE COURT: Mr. Bacon, you cool with that too?

20 MR. BACON: That'd be fine, Your Honor, thank you.

21 THE COURT: Okay. All right, then. What else do we
22 have for tonight? Sir, are you waiting to come up to see me,
23 speak to me?

24 MR. QUIGLEY: Yes, sir. Sorry to delay, Judge, Sean
25 Quigley from Lowenstein Sandler on behalf of a bunch of

1 dealerships. I don't know if you want me to put a statement on
2 the record tomorrow or --

3 THE COURT: I think at this point I want all
4 statements tomorrow, including those who haven't spoken yet.

5 MR. QUIGLEY: All right.

6 THE COURT: And at this point we're going to adjourn
7 for the evening. Mr. Richman, would you be in a position where
8 you could start at 9 tomorrow instead of 9:45?

9 MR. RICHMAN: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. MILLER: Are we in this courtroom?

12 THE COURT: Yes, we will be. And you folks can leave
13 your stuff here under the same understandings that you did
14 yesterday.

15 MR. MILLER: Could we have someone stand, Your Honor,
16 on time for Mr. Richman and Mr. Parker?

17 THE COURT: Well, Mr. Richman, I think you told me
18 something once but I don't remember what it was.

19 MR. RICHMAN: Well, I think Mr. Miller argued for a
20 little over an hour by my reckoning. I don't expect to be that
21 long.

22 THE COURT: Yes, but he was taking care of seven
23 different groups of objections.

24 MR. RICHMAN: I guessed earlier thirty to forty-five
25 and I think I'll still be in that range.

1 THE COURT: Okay.

2 MR. RICHMAN: Thank you, Your Honor.

3 THE COURT: All right, see you folks tomorrow, we're
4 adjourned. Good night.

5 (Whereupon these proceedings were concluded at 7:02 p.m.)

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

LISA BAR-LEIB

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